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## **TRANSCRIPT OF RECORD**

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**Supreme Court of the United States**

**OCTOBER TERM, 1942**

**No. 660**

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**MOLINE PROPERTIES, INC., PETITIONER,**

*vs.*

**COMMISSIONER OF INTERNAL REVENUE**

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**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT  
OF APPEALS FOR THE FIFTH CIRCUIT**

---

**PETITION FOR CERTIORARI FILED JANUARY 18, 1943.**

**CERTIORARI GRANTED MARCH 8, 1943.**

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 660

MOLINE PROPERTIES, INC., PETITIONER,

vs.

COMMISSIONER OF INTERNAL REVENUE

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT  
OF APPEALS FOR THE FIFTH CIRCUIT

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**TRANSCRIPT OF RECORD**

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**UNITED STATES CIRCUIT COURT OF APPEALS  
FIFTH CIRCUIT**

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**COMMISSIONER OF INTERNAL REVENUE,**  
**Petitioner,**

**v.**

**MOLINE PROPERTIES, INC.,**  
**Respondent.**

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**ON PETITION TO REVIEW THE DECISION OF  
THE UNITED STATES BOARD OF  
TAX APPEALS**

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## DOCKET NO. 103862

MOLINE PROPERTIES, INC., a Florida Corporation,  
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

Appearances:

For Taxpayer: Douglas D. Felix,

B. M. Smethurst.

For Comm'r: F. L. Van Haaften.

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DOCKET ENTRIES

1940

July 20—Petition received and filed. Taxpayer notified.  
Fee paid.

July 20—Copy of petition served on General Counsel.

July 20—Request for Circuit hearing in Miami, Florida,  
filed by taxpayer. 7/20/40 copy served.

Aug. 30—Answer filed by General Counsel.

Sept. 5—Copy of answer served on taxpayer. Miami,  
Florida.

Nov. 6—Hearing set Jan. 6, 1941, in Miami, Florida.

Dec. 26—Application for subpoena to Uly O. Thompson  
filed by General Counsel. (duces tecum.)

Dec. 26—Subpoena duces tecum to Uly O. Thompson issued.

### 1941

Jan. 8—Hearing had before Mr. Arundell on the merits. Submitted. Briefs due 45 days. Reply briefs 15 days.

Jan. 22—Transcript of hearing 1/8/41 filed.

Feb. 21—Brief filed by General Counsel.

Feb. 24—Brief filed by taxpayer. 2/24/41 copy served on General Counsel.

March 12—Reply brief filed by taxpayer. (O. K. Mr. Arundell.)

Nov. 7—Findings of fact and opinion rendered, Arundell, ¶7. Decision will be entered for the petitioner. 11/7/41 copy served.

Nov. 7—Decision entered. Arundell, Division 7.

### 1942

Feb. 2—Petition for review by U. S. Circuit Court of Appeals, 5th Circuit, with assignments of error filed by General Counsel.

Feb. 10—Proof of service filed by General Counsel. (2).

March 21—Agreed statement of evidence lodged, with statement of service by mail thereon.

March 21—Praecipe for record filed by General Counsel, with statement of service by mail thereon.

March 27—Proof of service of filing praecipe for record filed by General Counsel.

March 27—Proof of service of lodging statement of evidence filed by General Counsel.

March 28—Agreed statement of evidence approved and ordered filed.

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United States Board of Tax Appeals

July 20, 1940

UNITED STATES BOARD OF TAX APPEALS

MOLINE PROPERTIES, INC.,  
a Florida Corporation,

Petitioner,

v.

COMMISSIONER OF INTERNAL  
REVENUE.

Respondent.

} Docket No. 103862

PETITION

The above named Petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency, (It:R:HEB:90D) dated April 24, 1940, and as a basis of its proceedings alleges as follows:

(1) The petitioner is a corporation organized under the laws of the State of Florida, located at 1126 Ingraham Building, Miami, Florida.

(2) The notice of deficiency (a copy of which is attached and marked Exhibit "A") was mailed to the petitioner on April 24, 1940.

(3) The taxes in controversy are income taxes for the calendar years ended December 31, 1935, and December 31, 1936, in the amount of \$4,993.82, and excess profit taxes for the same years in the amount of \$4,344.95, together with penalties of \$788.35.

(4) The determination of tax set forth in said notice of deficiency is based upon the following error: In that the respondent determined that the petitioner corporation is taxable on the profits resulting from the sale in 1935 and 1936 of the property herein below described, whereas, in truth and in fact, petitioner was a so-called "dummy" corporation and the profit from the sale of said property is taxable to one Uly C. Thompson, who was then the owner of all of the capital stock of said corporation, and the beneficial owner of said property.

(5) The facts upon which the petitioner relies, as a basis for this proceeding, are as follows:

During the year 1928 the said Uly O. Thompson was the owner in fee simple of four lots situated in Miami Beach, Florida, and described as follows:

Lots One (1), Two (2), Three (3) and Four (4), in Block Seventy-seven (77) of FISHER'S FIRST SUBDIVISION OF ALTON BEACH, FLORIDA, according to plat thereof recorded in Plat Book 2, page 77, of the Public Records of Dade County, Florida.

The title to said lots was incumbered by two mortgages. One of these mortgages, dated March 18, 1926, was held by the Miami Beach Bank & Trust Company, a subsidiary of the Bank of Bay Biscayne, and secured the payment of a promissory note in the principal sum of \$20,000.00, which the said Uly O. Thompson had made and delivered to said bank to evidence a loan it had made to him in that amount.

In addition to these two mortgages the aforesaid property was also encumbered by tax liens, aggregating approximately \$6,000.00, and in 1928 the said Uly O. Thompson applied to the Bank of Bay Biscayne for a loan to enable him to pay the delinquent taxes represented by said tax liens. The Bank agreed to lend Mr. Thompson a sum sufficient to liquidate said taxes provided he would transfer his title to the aforesaid lots to a corporation to be organized by said bank, and provided he would thereupon pledge all of the capital stock of said corporation with the said bank as collateral security for the payment of said loan. In order to comply with this condition the said Thompson thereupon authorized the said bank to organize the petitioner corporation at his expense, and after its organization he conveyed title to the aforesaid lots to that corporation in exchange for all of its capital stock. At the same time, and in compliance with the bank's stipulation for said loan, the certificates for all of the capital stock of the petitioner corporation were endorsed in blank and delivered to the said bank, and, further complying with the said bank's demands, the said Thompson at the same time, entered into a voting trust agreement wherein and whereby he appointed an employee of said bank as his trustee to vote said stock. Said trustee, acting under the authority of said agreement, then set up a Board of Directors for the petitioner corporation composed entirely of employees and representatives of said bank.

During the year 1930 the Bank of Bay Biscayne failed and thereafter the said Thompson effected a compromise settlement of his aforesaid indebtedness to said bank. The Liquidator of said bank then turned over to the said Thompson the minute book, stock book and charter of said corporation, together with the aforesaid certificates of stock, which he had theretofore endorsed in blank and delivered to said bank.

During the years 1934, 1935 and 1936, the said Thompson sold the aforesaid real estate in three parcels, and in

each instance caused petitioner corporation to execute and deliver a deed to the purchaser of said property. The first two of the above-mentioned sales was erroneously reported in income tax returns filed in the name of said corporation, but the latter of said sales was reported by the said Uly O. Thompson in his individual income tax return. The profit from said two latter sales was erroneously determined by the respondent to be taxable to petitioner corporation, and this appeal is filed from that determination.

The petitioner corporation at no time had any assets other than the four lots above described. It never engaged in any activities save and except those hereinabove described which were made necessary by the aforementioned demands of the Bank of Bay Biscayne, and except to execute the necessary deeds of conveyance when the said Uly O. Thompson consummated the sale of the aforesaid property. It was at all times intended that the petitioner corporation would merely be the repository for the title to said property to comply with the bank's aforesaid demand, and it was never intended that the corporation would engage in, and it never did engage in any business activities. It did not keep any books of account. It had no place of business, no employees or bank account. The expenses relating to the aforesaid property were paid by the said Uly O. Thompson and the proceeds from the aforesaid sales were deposited in the bank account of the said Thompson and used by him.. The sole and only function of the petitioner corporation since its organization was to hold title to the four lots above described.

WHEREFORE, the petitiner prays that the Board may hear this proceeding and find that the petitioner was a so-called "dummy" corporation, and that it is not liable for the payment of income and excess profits taxes for the calendar years 1935 and 1936 on the profits resulting from the sale of the aforesaid real estate during those years.

Douglas D. Felix  
 Miami, Florida.  
 Attorney for Petitioner.  
 Congress Building  
 B. M. Smethurst  
 Counsel for Petitioner.  
 Langford Building  
 Miami, Florida.

---

STATE OF FLORIDA    )  
                                   ) ss.  
 COUNTY OF DADE     )

ULY O. THOMPSON, being by me first duly sworn, deposes and says that he is President of the Moline Properties, Inc., a Florida corporation, the petitioner herein, and as such officer is duly authorized to verify the foregoing petition; that he has read said petition and that the statements contained therein are true.

Uly O. Thompson.

SWORN to and subscribed before me this 19th day of July, A. D. 1940.

Anne Cowart  
 Notary Public  
 State of Florida at Large.

My Commission expires Jan. 13. 1941.

SN-IT-3

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TREASURY DEPARTMENT

Internal Revenue Service.

April 24, 1940

Office of  
Internal Revenue Agent  
in Charge

Jacksonville Division

IT:R:EEB:90D

LS

Moline Properties, Inc.,  
c/o Judge Uly O. Thompson,  
1126 Ingraham Building,  
Miami Florida.

Sirs:

You are advised that the determination of your income tax liability for the taxable year(s) ended Dec. 31, 1935 & 1936 discloses a deficiency of \$4,993.82, and that the determination of your excess profits tax liability for the year(s) mentioned discloses a deficiency of \$4,344.95 as shown in the statement attached, together with penalties of \$788.35.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiencies mentioned.

Within 90 days (not counting Sunday or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with the United States Board of Tax Appeals for a re-determination of the deficiencies.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to



the Internal Revenue Agent in Charge, Jacksonville Fla., for the attention of IT:R:EEB.

The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Respectfully,

Guy T. Helvering,

Commissioner.

By

(Signed) Harley Howard

Internal Revenue Agent in Charge.

Enclosures:

Statement.

Form of waiver.

Exhibit "A"

STATEMENT

IT:R:EEB:90D

LS

Moline Properties, Inc.

c/o Judge Uly O. Thompson

1126 Ingraham Building.

Miami, Florida.

## Tax Liability for the Taxable Years Ended

December 31, 1935 and 1936.

Year	Liability	Income Tax Assessed	Deficiency
1935	\$1,869.12	\$801.93	\$1,067.19
1936	3,926.63	None	3,926.63
Total	<u>\$5,795.75</u>	<u>\$801.93</u>	<u>\$4,993.82</u>
	Excess-Profits Tax		
1935	\$ 617.35	\$229.29	\$ 388.06
1936	3,956.89	None	3,956.89
Total	<u>\$4,574.24</u>	<u>\$229.29</u>	<u>\$4,344.95</u>
10% Delinquency Penalty for 1936			\$ 788.35

In making this determination of your tax liability, careful consideration has been given to the internal revenue agent's report dated May 22, 1939.

## Taxable Year Ended December 31, 1935

## Adjustment to Net Income

Net income reported on return	\$ 5,832.19
Unallowable deductions and additional income:	
(a) Capital gain	7,761.38
Net income adjusted	<u>\$13,593.57</u>

## Explanation of Adjustment

(a) Capital gain on sale of real estate has been included to the extent of the total amount received on said sale in view of the fact that the entire cost of the assets disposed of had been recovered in prior years.

## Computation of Tax.

Taxable net income	\$13,593.57
Tax at 13-3/4%	\$1,869.12
Less: Tax previously assessed, original, account #401517	801.93
	<hr/>
Deficiency income tax	\$ 1,067.19
Taxable net income	\$13,593.57
Less: 12½% of \$9,971.89 value of capital stock as declared in capital stock tax return for the year ended June 30, 1935	1,246.49
	<hr/>
Subject to excess-profits tax	\$12,347.08
Excess-profits tax at 5%	\$ 617.35
Less: Tax previously assessed, original, account # 401517	229.29
	<hr/>
Deficiency excess-profits tax	\$ 388.06

Taxable Year Ended December 31, 1936

## Adjustment to Net Income

Net income reported on return	\$ None
Unallowable deductions and additional income:	
(a) Capital gain	32,974.07
	<hr/>
Net income adjusted	\$32,974.07

## Explanation of Adjustment

(a) Profits on sale of real estate not reported on original return has been included as taxable income. Detailed computation of profit is shown as follows:

Sale price		\$40,000.00
Less:		
Proration of interest	\$ 518.85	
Proration of taxes	3,814.74	
Commissions	2,000.00	
Stamps	80.00	
Recording	1.35	
Abstract	61.00	
Title Insurance	100.00	
Ocean strip—cost (1936)	450.00	7,025.93
Profit realized		<u>\$32,974.07</u>

## Computation of Tax

Excess-Profits Tax:	
Taxable net income	\$32,974.07
Less: 10% of no-declared value of capital stock as declared in capital stock tax return for the year ended June 30, 1936	None
Subject to excess-profits tax	<u>\$32,974.07</u>
Excess-profits tax at 12%	\$ 3,956.89
Less: Tax previously assessed, original, account #855350	None
Deficiency excess-profits tax	<u>\$ 3,956.89</u>
Income Tax:	
Normal Tax:	
Taxable net income	\$32,974.07
Less excess-profits tax (cash basis)	None
Subject to normal tax	<u>\$32,974.07</u>
Tax at 3% on \$2,000.00	\$ 160.00
Tax at 11% on \$13,000.00	1,430.00
Tax at 13% on \$17,974.07	<u>2,336.63</u>
Total normal tax	\$ 3,926.63

Surtax on Undistributed Profits:		
Taxable net income		\$32,974.07
Less: Excess-profits tax	\$ None	
Normal tax	3,926.63	3,926.63
		<hr/>
Adjusted net income		\$29,047.44
Less dividends—paid credit		32,974.07
		<hr/>
Undistributed net income		None
Surtax		None
Normal tax		3,926.63
		<hr/>
Total income tax		\$ 3,926.63
Less: Tax previously assessed, original, account #855350		None
		<hr/>
Deficiency income tax		\$ 3,926.63
10% delinquency penalty on total liability for 1936		\$ 788.35

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## UNITED STATES BOARD OF TAX APPEALS

United States Board of Tax Appeals

Received Aug 30 1940

Filed Aug 30 1940

MOLINE PROPERTIES, INC.,  
a Florida Corporation,

Petitioner,

v.

COMMISSIONER OF INTERNAL  
REVENUE,

Respondent.

} Docket No. 103862

## ANSWER

COMES now the respondent, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue,

and for answer to the petition filed in the above entitled appeal, admits and denies as follows:

(1), (2), and (3) Admits the allegations contained in paragraphs (1), (2), and (3) of the petition.

(4) Denies the allegations of error contained in paragraph (4) of the petition.

(5) Admits that during the years 1934, 1935, and 1936, certain sales of real estate were made, and the petitioner corporation executed and delivered deeds to the purchaser of said properties. Specifically denies that the sales were made by Uly O. Thompson or that the real estate was owned by said Thompson. Further admits that the profit from the sales in the latter two years was determined by the respondent to be taxable to the petitioner corporation. Denies all other allegations contained in paragraph (5) of the petition.

(6) Denies generally and specifically each and every allegation contained in the petition not heretofore admitted, qualified, or denied.

WHEREFORE, it is prayed that the appeal be denied and that the Commissioner's determination be approved.

(Signed)

J. P. WENCHEL,  
Chief Counsel,  
Bureau of Internal Revenue.

OF COUNSEL:

Frank M. Thompson, Jr.,  
Division Counsel,

F. L. Van Haaften,  
Special Attorney,  
Bureau of Internal Revenue.

## UNITED STATES BOARD OF TAX APPEALS

MOLINE PROPERTIES, INC.,  
A FLORIDA CORPORATION, PETITIONER,

v.

COMMISSIONER OF INTERNAL REVENUE,  
RESPONDENT.

Docket No. 103862. Promulgated November 7, 1941

Petitioner was organized in 1928 to take title to certain mortgaged real property on which the mortgagee agreed to advance further funds on condition that the petitioner should be organized. The stock was pledged with the mortgagee. In 1933 the mortgages were discharged with funds secured from a new mortgage loan. The property was sold in three parcels in 1934, 1935, and 1936. Held, petitioner functioned as a mere agent and its existence must be disregarded in taxing gain on the sale of the property.

Douglas D. Felix, Esq., for petitioner.

F. L. Van Haaften, Esq., for the respondent.

This proceeding is brought for redetermination of the following deficiencies:

Calendar year	Income tax	Excess profits tax
1935	\$1,067.19	\$ 388.06
1936	3,926.63	3,956.89

The respondent has added a 10 percent delinquency penalty for the year 1936 in the amount of \$788.35.

The issue here is whether the petitioner's sole stockholder is entitled to report the income of the petitioner

from the sale of real property as his income, treating the petitioner as a corporation without substance.

### FINDINGS OF FACT.

The petitioner is a corporation, organized under the laws of Florida in 1928. Its president and sole stockholder, with the exception of those holding qualifying shares, throughout the period from the time of its organization down through the taxable years, was Uly O. Thompson. Tax returns for the years in question were filed with the collector for the district of Florida.

On August 17, 1920, Thompson acquired four lots of unimproved realty situated in Dade County, Florida, which he mortgaged in 1923 to William F. Whitman for a \$20,000 debt. On March 18, 1926, he gave a second mortgage to the Miami Beach Bank & Trust Co. to secure an additional indebtedness of \$20,000.

Subsequently the mortgaged land did not prove profitable to Thompson and he allowed taxes due on the property to remain unpaid. In 1928 back taxes were owing in the sum of \$6,500. At this time Thompson was told by the second mortgagee that the taxes must be paid to prevent loss of the property and the following agreement was reached whereby this was accomplished: The Bank of Bay Biscayne, an affiliate of the Miami Beach Bank & Trust Co., agreed to loan Thompson \$6,750 for the payment of taxes provided he convey title to the property to a corporation organized by the bank to hold such title. Stock of the corporation was to be issued to Thompson but was to be pledged as collateral for the loan and be placed by him in a voting trust of which an officer of the bank should be trustee with power to vote the stock for all purposes. The trust was to cease either on the payment of the loan or on the sale of the stock pledged as collateral. Pursuant to this agreement Thompson, on June 5, 1928, conveyed the property to the petitioner corporation, which had been organized



also pursuant to the agreement, and received in return all of the petitioner's stock, with the exception of qualifying shares. He thereupon executed a trust agreement conveying that stock to the voting trustee. The corporation assumed and agreed to pay the mortgages on the property.

The Bank of Bay Biscayne closed during the year 1930 and thereafter its powers under the voting trust were exercised by the liquidator of the bank. During this period a suit was instituted to remove certain restrictions imposed on the property by a prior deed. Expenses connected with this suit in the sum of \$4,005.39 were paid by Thompson in 1933 and subsequent years. The petitioner was also required to defend certain condemnation proceedings during this period.

The petitioner on October 1, 1929, purchased from the Bank of Bay Biscayne a note of Uly O. Thompson, together with a mortgage securing it, in the amount of \$43,000, on which interest of \$9,703.14 was due, at its par value plus accrued interest. The petitioner gave its note for the purchase money, securing it with Thompson's mortgage which it received on the purchase of the note.

On July 29, 1933, the petitioner discharged and satisfied the two mortgages which were outstanding on the property owned by it, each in the amount of \$20,000. Funds for these discharges were obtained by Thompson through a loan which he negotiated with the National Investment Holdings, Inc. This loan was secured by a mortgage on a portion of the property in question. The debt of \$6,750 owed to the Bank of Bay Biscayne was settled by the petitioner during 1933. Control of the petitioner corporation was returned to Thompson in 1933.

The mortgage debt owed to the National Investment Holdings, Inc., was paid in 1936 through the sale of a portion of the mortgaged property.

The petitioner did not keep books of account or maintain a bank account during the period of its existence. It owned no assets other than the real estate described above. It leased a portion of its properties in 1934 for a parking lot, from which it received rental of \$1,000. Thompson owned other extensive real property in Miami, title to all of which was in his name individually.

The real property held by the petitioner was sold in three separate parcels, one in each of the years 1934, 1935, and 1936. Proceeds of these sales were received by Thompson and deposited in his bank account. The sales made in 1934 and 1935 were reported in the returns of the petitioner, which were prepared by an auditor retained by Thompson. A loss of \$698.11 was reported for 1934 and a gain of \$5,851.94 for 1935. Subsequently Thompson was advised by his auditor that, due to the circumstances of the petitioner's organization, gain on these sales might be reported by Thompson and a claim for refund of tax accordingly filed on the petitioner's behalf for 1935. In a delinquent return filed on December 2, 1938, Thompson reported the 1935 gain as his individual gain. Gain on the 1936 sale was reported by Thompson in the amount of \$3,829.14.

Thompson was, during the year 1934 and a part of the year 1935, a circuit judge of the State of Florida. His salary was his principal source of income. When his office was abolished in 1935 he returned to the practice of law.

The petitioner corporation has not been dissolved; however, it has transacted no business since the sale of its property in 1936.

#### OPINION.

ARUNDELL: The petitioner here seeks to be relieved from reporting gain on the sale of real property to which it held title, and to have that gain taxed to its sole stock-

holder. It argues that the purpose for which it was established and the limited scope of its function render it so unsubstantial as to require us to disregard it in fixing tax liability.

The answer to this argument, the respondent contends, is that the original limited purpose for which the petitioner was organized was terminated in 1933 and that during the taxable years it must be regarded as an ordinary taxable corporation, especially in view of its activities in renting and selling its realty holdings.

There is some substance in the latter contentions and in the presence of evidence of additional activity on the petitioner's part in 1935 and 1936 we should perhaps incline to the respondent's view. However, as we regard the issue, it reduces to a question of whether limited activities involving the sale of vacant property and the rental of a portion of it during a part of the interim, carried through by a corporation of the type we have consistently disregarded, after the reasons for its organization have lapsed, can convert the petitioner into a substantial concern which must be taxed separately. The answer is to be found in the facts. The organization of the petitioner was undertaken at the suggestion of Thompson's creditors as a means of protecting their investments and of saving his equity in certain Florida real estate. Control of the corporation was placed in the bank. It had no activities from that time until 1933 except one transaction of somewhat dubious character whereby the bank apparently sought to charge the petitioner with an additional debt of Thompson. During the year 1933 the creditors instigating its organization were paid by Thompson and control of the petitioner was returned to him. Settlement of the indebtedness was made with borrowings from other sources. The corporation continued to exist down through the taxable years, sales of its holdings being made in each of the intervening years. No other activities were carried on by it except rental of a portion of the property in 1934

for use as a parking lot. It maintained none of the equipment or paraphernalia ordinarily associated with the corporate form, including offices, employees, books, or other records.

From this review of the circumstances before us it must be apparent that the petitioner existed for very limited purposes. The primary purpose, the protection of the stockholders' creditors, was one which we have considered before. *Abrams Sons' Realty Corporation*, 40 B. T. A. 653. There we held that a corporation, organized to hold title to mortgaged property, to protect the mortgagees and to secure an equitable distribution of the proceeds when the land was condemned, should be disregarded in taxing any gain resultant on the condemnation. See also *Thrift Realty Co.*, 29 B. T. A. 545.

The limited activities for which it was maintained thereafter do not alter its essential nature. It continued merely as a holder of title. Full beneficial ownership was in Thompson, who continued to manage and regard the property as his own individually. We have frequently held that a corporation which existed merely to facilitate the passage of title to real estate, where its stockholders acted without regard for the corporate entity, was a mere figmentary agent which should be disregarded in the assessment of taxes. *Mark A. Mayer*, 36 B. T. A. 117; *J. L. McInerney*, 29 B. T. A. 1; *affd.*, 82 Fed. (2d) 665; *Stewart Forshay*, 20 B. T. A. 537.

These cases give adequate answer to the respondent's chief contentions. It is true that the petitioner was not organized originally for the purpose for which it was maintained during the taxable years. Both purposes, however, fall within the holdings wherein we have disregarded the corporate entity to effect a more realistic assessment of taxes. The final circumstance of rentals collected in 1934 falls in the category of a limited incidental operation which was undertaken without dis-

turbing the essential functioning of the petitioner. Its minor character renders it of no effect on our conclusion.

The case of Fleming G. Railey, 36 B. T. A. 543, relied on by the respondent, is not applicable here, where it is plain that Thompson did not organize the petitioner as a "shield against judgment creditors." Cf. also Sheldon Building Corporation v. Commissioner, 118 Fed. (2d) 835.

The petitioner must accordingly be sustained.

Decision will be entered for the petitioner.

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## UNITED STATES BOARD OF TAX APPEALS

### WASHINGTON

MOLINE PROPERTIES, INC.,

A Florida Corporation,

Petitioner,

v.

COMMISSIONER OF

INTERNAL REVENUE,

Respondent,

} Docket No. 103862

### DECISION

Pursuant to the determination of the Board, as set forth in its Findings of Fact and Opinion, promulgated November 7, 1941, it is

ORDERED and DECIDED: That there are no deficiencies in income tax or excess-profits tax for the years 1935 and 1936, and there is no delinquency penalty for the year 1936.

(S) C. R. ARUNDELL,  
Member

ENTERED NOV. 7, 1941.

IN THE UNITED STATES CIRCUIT COURT  
OF APPEALS

FOR THE FIFTH CIRCUIT

United States Board of Tax Appeals

Received Feb 2 1942

Filed Feb 2 1942

GUY T. HELVERING,  
Commissioner of  
Internal Revenue,

Petitioner on Review,  
v.

MOLINE PROPERTIES, INC.,  
Respondent on Review.

} B. T. A.  
Docket No. 103862

PETITION FOR REVIEW AND ASSIGNMENTS  
OF ERROR

To the Honorable Judges of the United States Circuit  
Court of Appeals for the Fifth Circuit:

NOW COMES Guy T. Helvering, Commissioner of Internal Revenue, by his attorneys, Samuel O. Clark, Jr., Assistant Attorney General, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and Charles E. Lowery, Special Attorney, Bureau of Internal Revenue, and respectfully shows:

I.

JURISDICTION

That he is the duly appointed, qualified and acting Commissioner of Internal Revenue of the United States holding his office by virtue of the laws of the United

States; that the respondent on review, Moline Properties, Inc. (hereinafter referred to as the taxpayer), is a corporation organized under and existing by virtue of the laws of the State of Florida, having its principal office in Miami, Florida. The taxpayer filed its Federal corporation income and excess-profits tax returns for the taxable years 1935 and 1936 with the Collector of Internal Revenue for the District of Florida, whose office is located in the City of Jacksonville, Florida, and within the judicial circuit of the United States Circuit Court of Appeals for the Fifth Circuit.

The Commissioner files this petition pursuant to the provisions of Sections 1141 and 1142 of the Internal Revenue Code.

## II.

### PRIOR PROCEEDINGS

On April 24, 1940, the Commissioner determined deficiencies in Federal income taxes against the taxpayer for the calendar years 1935 and 1936 in the respective amounts of \$1,067.19 and \$3,926.63, deficiencies in excess-profits taxes for the calendar years 1935 and 1936 in the respective amounts of \$388.06 and \$3,956.89, and a ten percent delinquency penalty for the calendar year 1936 in the amount of \$788.35. A notice of the deficiencies so determined was sent to the taxpayer by registered mail on April 24, 1940, in accordance with the provisions of existing internal revenue laws. Thereafter and on July 20, 1940, the taxpayer filed an appeal from the said determination of the Commissioner with the United States Board of Tax Appeals.

The case was duly tried to the United States Board of Tax Appeals and on November 7, 1941, the Board promulgated its opinion (45 B. T. A. No. 105), pursuant to which opinion it entered its decision on the same date wherein and whereby it was ordered and decided "that



there are no deficiencies in income tax or excess profits tax for the years 1935 and 1936, and there is no delinquency penalty for the year 1936".

### III.

#### NATURE OF CONTROVERSY

The question presented to the Board of Tax Appeals for its consideration and which was answered by the Board contrary to the Commissioner's determination is whether the income derived by the taxpayer from the sale of certain parcels of real property was taxable to the taxpayer corporation as determined by the Commissioner or to the corporation's sole stockholder as claimed by the taxpayer. Briefly stated the facts are as follows:

The taxpayer, a Florida corporation, was organized in 1928. Its stock, except qualifying shares, was held by Uly O. Thompson. Thompson had acquired certain unimproved realty in 1920 situated in Dade County, Florida, which he mortgaged in 1923 to William F. Whitman for a \$20,000 debt. In 1926 he gave a second mortgage on the property to the Miami Beach Bank & Trust Company to secure an additional indebtedness of \$20,000. By 1928 unpaid back taxes on the property were owing in the amount of \$6,500. Thompson was then notified by the second mortgagee that the unpaid taxes would have to be paid to prevent the loss of the property. Thereafter an affiliate of the second mortgagee agreed to loan Thompson \$6,750 for the payment of taxes provided that he would convey title to the property to a corporation organized by the bank. Accordingly on June 5, 1928, Thompson conveyed the property to the taxpayer here involved, the corporation which was organized for the purpose of receiving title. All of the taxpayer's stock was issued to Thompson who thereupon executed a trust agreement conveying the stock to an officer of the bank as voting trustee. The taxpayer also assumed and agreed to pay the mortgages on the property.



In 1930 The Bank of Bay Biscayne, the affiliate hereinabove mentioned, closed and its powers under the voting trust were thereafter exercised by the liquidator of the bank. In 1933 the taxpayer discharged and satisfied the two \$20,000 mortgages on the property through a loan which Thompson negotiated with National Investment Holdings, Inc., and secured by a mortgage on a portion of the property. The debt of \$6,750 owing to the Bank of Bay Biscayne was likewise settled by the taxpayer in 1933 and control of the corporation was returned to Thompson. In 1936 a portion of the mortgaged property was sold and the debt owed to National Investment Holdings, Inc., was paid.

A portion of the taxpayer's properties was leased in 1934 for a parking lot from which a rental of \$1,000 was received. The real property in question was sold in three separate parcels in the years 1934, 1935, and 1936, the proceeds from which sales were received by Thompson and deposited in his bank account. The corporation here involved reported the sales in its 1934 and 1935 returns. Thompson having been advised by his auditor that the gain on these sales might be reported by him instead of the corporation, a claim for refund was filed by the corporation for the year 1935 and a delinquent return was filed for Thompson in which the 1935 gain was reported. The 1934 return of the taxpayer showed a loss. A gain on the 1936 sale was reported by Thompson in the amount of \$3,829.14. The taxpayer corporation is still in existence.

In his notice of deficiency the Commissioner determined that the taxpayer corporation was taxable on the profits resulting from the sales made in 1935 and 1936 of the properties held by the corporation. In its appeal to the Board of Tax Appeals from the Commissioner's determination the taxpayer contended that the corporation was merely a "dummy" corporation, that Uly O. Thompson, the owner of its capital stock, was the beneficial owner of the property, and that, accord-

ingly, Thompson rather than the corporation was taxable on the profits derived from the sales of the property. From the facts as found by the Board of Tax Appeals, it reached the conclusion that the taxpayer functioned as a mere agent and its existence must be disregarded in taxing gains derived from the sales of the property. Accordingly, the Board entered its judgment of no deficiencies.

#### IV.

#### ASSIGNMENTS OF ERROR

The Commissioner avers that in the record and proceedings before the United States Board of Tax Appeals and in the opinion and final decision rendered and entered by the United States Board of Tax Appeals, manifest error occurred and intervened to the prejudice of the Commissioner who now assigns the following errors and each of them, which he avers occurred in said record, proceedings, opinion, and final decision so rendered and entered by the United States Board of Tax Appeals:

The United States Board of Tax Appeals erred—

1. In ordering and deciding "that there are no deficiencies in income tax or excess profits tax for the years 1935 and 1936, and there is no delinquency penalty for the year 1936."
2. In failing and refusing to sustain the determination of the Commissioner.
3. In holding and deciding that the taxpayer "functioned as a mere agent and its existence must be disregarded in taxing gain on the sale of the property."
4. In failing and refusing to hold and decide that the taxpayer served a legitimate corporate purpose and in

such capacity was taxable on the income derived from the sale of the real estate sold in the years 1935 and 1936.

5. In that its opinion and decision are contrary to its findings of fact.

6. In that its opinion and decision are not supported by its findings of fact and are contrary to law.

WHEREFORE, the Commissioner petitions that the decision of the United States Board of Tax Appeals be reviewed by the United States Circuit Court of Appeals for the Fifth Circuit, that a transcript of the record be prepared in accordance with law and with the rules of said Court and transmitted to the Clerk of said Court for filing, and that appropriate action be taken to the end that the errors complained of may be reviewed and corrected by said Court.

(Signed) Samuel O. Clark, Jr.  
Assistant Attorney General.

(Signed) J. P. Wenchel,  
Chief Counsel,  
Bureau of Internal Revenue.

OF COUNSEL:

CHARLES E. LOWERY,  
Special Attorney,  
Bureau of Internal Revenue.

UNITED STATES OF AMERICA )  
 ) ss.  
DISTRICT OF COLUMBIA )

CHARLES E. LOWERY, being duly sworn, says that he is a Special Attorney in the Bureau of Internal

Revenue, and as such is duly authorized to verify the foregoing petition for review; that he has read said petition and is familiar with the contents thereof; that said petition is true of his own knowledge except as to the matters therein alleged on information and belief, and as to those matters he believes it to be true.

(Sgd) Charles E. Lowery

Sworn and subscribed to before me  
this 31st day of January, 1942.

(Sgd) George W. Kreiz,  
Notary Public

My commission expires November 15, 1942.

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United States Board of Tax Appeals

Received Feb 10 1942

Filed Feb 10 1942

IN THE UNITED STATES CIRCUIT COURT OF  
APPEALS FOR THE FIFTH CIRCUIT

GUY T. HELVERING,  
Commissioner of  
Internal Revenue,  
Petitioner on Review,  
v.  
MOLINE PROPERTIES, INC.,  
Respondent on Review.

B. T. A.  
Docket No. 103862

NOTICE OF FILING PETITION FOR REVIEW

To:

Moline Properties, Inc.,  
1126 Ingraham Building,  
Miami, Florida.

You are hereby notified that the Commissioner of Internal Revenue did, on the 2nd day of February, 1942, file with the Clerk of the United States Board of Tax Appeals, at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Fifth Circuit of the decision of the Board heretofore rendered in the above-entitled cause. A copy of the petition for review and assignments of error as filed is hereto attached and served upon you.

Dated this 2nd day of February, 1942.

(Signed)

J. P. Wenchel,  
Chief Counsel,  
Bureau of Internal Revenue.

Personal service of the above and foregoing notice, together with a copy of the petition for review and assignments of error mentioned therein, is hereby acknowledged this 5th day of February, 1942.

MOLINE PROPERTIES, INC.

By

(Sgd.) Uly O. Thompson,  
President.

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United States Board of Tax Appeals

Received Feb 10 1942

Filed Feb 10 1942

IN THE UNITED STATES CIRCUIT COURT OF  
APPEALS FOR THE FIFTH CIRCUIT

GUY T. HELVERING, Commissioner of Internal Revenue, Petitioner on Review,	}	B. T. A. Docket No. 103862
v. MOLINE PROPERTIES, INC., Respondent on Review.		

NOTICE OF FILING PETITION FOR REVIEW

To:

Douglas D. Felix, Esq.,  
Congress Building,  
Miami, Florida.

You are hereby notified that the Commissioner of Internal Revenue did, on the 2nd day of February, 1942, file with the Clerk of the United States Board of Tax Appeals, at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Fifth Circuit of the decision of the Board heretofore rendered in the above-entitled cause. A copy of the petition for review and assignments of error as filed is hereto attached and served upon you.

Dated this 2nd day of February, 1942.

(Signed)

J. P. Wenchel,  
Chief Counsel  
Bureau of Internal Revenue.

Personal service of the above and foregoing notice, together with a copy of the petition for review and assignments of error mentioned therein, is hereby acknowledged this 5th day of February, 1942.

(Sgd) Douglas D. Felix,  
Attorney for Respondent on Review.

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United States Board of Tax Appeals

Received Mar 21 1942

Lodged Mar 21 1942

Filed Mar 28 1942

IN THE UNITED STATES CIRCUIT COURT OF  
APPEALS FOR THE FIFTH CIRCUIT

GUY T. HELVERING,

Commissioner of  
Internal Revenue,

Petitioner on Review,

v.

MOLINE PROPERTIES, INC.,

Respondent on Review.

B. T. A.  
Docket No. 103862

STATEMENT OF EVIDENCE

The following is a statement of the evidence in the above-entitled cause:

The proceeding came on for hearing at Miami, Florida, before the Honorable C. Rogers Arundell, Member of the United States Board of Tax Appeals on January 8, 1941. The taxpayer was represented by its counsel Douglas D. Felix, Esq., Miami, Florida, and the Commissioner of Internal Revenue was represented by his counsel F. L. Van Haaften, Esq.

R. K. MIXSON, a witness on behalf of the petitioner was duly sworn and testified as follows:

My address is 1601 Onaway, Miami Beach. In 1928 I was assistant vice president of the Bank of Bay Biscayne and one of the loan committee. I am familiar with the circumstances leading up to the incorporation of Moline Properties, the petitioner in this case. Mr. Thompson owed the Miami Beach Bank and Trust Company, which was an affiliated bank, at least a bank owned and controlled by the same directors as the Bank of Bay Biscayne, and his taxes were past due, subject to sale. The president of the Biscayne Bank called him in and told him he would have to do something about it or they would have to foreclose the mortgage over at the Beach; that if he would let the bank organize a corporation, transfer the property to the corporation, that the Bank of Bay Biscayne would loan him sufficient money to pay the taxes. Mr. Thompson agreed to that and the bank had its attorneys organize this corporation, I believe with the understanding that Mr. Thompson would assign all of the stock of the corporation to the bank as collateral to the loan, and also create a voting trust authorizing one of the officers of the Bank of Biscayne to vote the stock of the corporation organized, which was the Moline Properties.

On cross examination the witness testified as follows:

The bank closed June 11, 1930. Thereafter the bank still had control over the stock through the liquidator. I do not know when the liquidator ceased to have any control of the stock.

Q. When did you cease to become familiar with this corporation in so far as your actual knowledge of it in point of years? Would that be in 1928 when the liquidator was appointed?

A. No, 1930 when the liquidator was appointed. I was still an employee of the liquidator for one or two years after that.



Q. Do you know when this debt was liquidated with the bank?

A. No, I think it was after I left the employ. I believe it was still with the liquidator when I left his employ.

JUDGE ULY O. THOMPSON, a witness on behalf of the petitioner, was duly sworn and testified as follows:

I live at 3500 Moorings Drive, Coconut Grove. My office is at 1126 Ingraham Building, Miami. I was president of Moline Properties, Inc. in 1928 and was president of the company during its whole existence.

(The witness thereupon identified the minute book of Moline Properties, Inc.)

The minute book contains the complete minutes of the corporation, so far as I know. It was returned to me at the time of the liquidation of these debts in its present form. I had nothing to do with keeping the minutes with the exception of those purported minutes after I came in possession of that book, the last two I think, one or two minutes.

Q. And will you identify the minutes that you refer to that were drawn up after the corporation was returned from the bank?

A. Minute appearing as of July the 15th, 1933, and subsequent minutes as they appear in this book.

(The minute book was thereupon offered and received in evidence as petitioner's exhibit No. 1.)

The witness thereupon identified the stock book of Moline Properties, Inc. and testified that it was a complete record of all stock transactions.

(The stock book was thereupon offered and received in evidence as petitioner's exhibit No. 2.)

Q. I now hand you from this book stock certificates numbered 1, 2, 3, and 4, and will ask you if you can identify the signatures endorsing those certificates on the back.

A. Certificate No. 3 was issued to my secretary, Miss Sinclair, and bears her blank endorsement. Certificate No. 2 was issued to my brother, who was an associate in my office, and it bears his blank endorsement. Certificate No. 1 was issued to me for three shares, and it bears my blank endorsement. Certificate No. 4 for 20 shares was issued to me and bears my blank endorsement. That constituted all of the stock of Moline Properties.

I am familiar with the circumstances leading up to the incorporation of the Moline Properties, Inc. I don't recall the date, but some time prior to 1925 I was engaged by the Bank of Bay Biscayne to incorporate an affiliate bank at the Beach, known as the Miami Beach Bank and Trust Company, and I procured the charter for that bank. On the way to the office one morning I stopped at the bank. As I recall, Mr. Ben Shepard was president, and I borrowed \$20,000 on my personal note, with no security.

Subsequently to that time it became necessary to secure that loan and at the suggestion of the Mr. Gilman, who was a director in both banks, and other officials, I executed a second mortgage on a block of lots that I owned at the Beach, known as Block 77, Fisher's First Subdivision of Alton Beach, just across the street from my home.

This little block faced on the ocean front, and subsequently a night club was built right up against it, although my property was in the restricted residence subdivision.

Conditions grew worse and I couldn't pay the taxes on the property, and they accumulated to in the neighborhood of \$6500, and I had a conference with Mr. Gilman at his solicitation and direction.

Mr. Gilman was president of the Bank of Bay Biscayne and controlling director, I think, of the other bank. I think he controlled both banks. And he told me that it was necessary for those taxes to be taken care of or we all stood to lose the property, and I knew that that was true. And he said that the Bank of Bay Biscayne, not the bank at the Beach, would loan me \$6750 with which to pay the existing taxes on Block 77, but they were not going to do it unless I authorized the bank to form a corporation in which to place title to my property at the Beach, and that when the corporation was formed I would have to hypothecate all of the stock of the corporation to secure the tax money loan; that I would further have to give a voting trust to some officer of the bank to vote all of the stock of the corporation at any time they saw fit. And all that was done.

I authorized him to go ahead and form the corporation, and when these minutes introduced in evidence were brought up to my office for me to sign, something in there, the first minutes; the first time I ever saw the book I am sure I signed something. I haven't checked those minutes for six months. But they were brought up to my office with the corporate papers and the things for me to sign, and I signed whatever was brought up there. I remember we had some pleasantries with Mr. Sterne, who brought that over, I think. I asked him where in the world did he get the name of "Moline Properties?" And that is the way the corporation was formed. It was purely a receptacle to hold the title to this property in order to get the bank to loan that money, take care of the taxes.

The witness thereupon identified his signature and the signature of his wife on a mortgage deed to the

Miami Beach Bank and Trust Company dated March 18, 1926. The mortgage deed was offered and received in evidence as petitioner's exhibit No. 3.

A photostat copy of a deed dated August 17, 1920, by which Marie Vance Bowman and her husband conveyed Block 77 to Uly O. Thompson was offered and received in evidence as petitioner's exhibit No. 4.

Thereupon the witness identified the signatures on the voting trust dated June 5, 1928 between Uly O. Thompson, Muta Sinclair and Robert Thompson, parties of the first part, and Edward Sterne, as party of the second part and testified that it was the voting trust to which he had previously referred to in his testimony. The voting trust was offered and received in evidence as petitioner's exhibit No. 5.

The witness thereupon identified a warranty deed dated June 5, 1928, between Uly O. Thompson, joined in by his wife, Grace B. Thompson, and Moline Properties, Inc., which deed was offered and received in evidence as petitioner's exhibit No. 6.

Q. (BY MR. FELIX) I call your attention, Judge Thompson, to this paragraph appearing in Petitioner's Exhibit No. 6, which reads as follows:

"As to both of the above described mortgages, the grantee herein, by its acceptance of this deed, hereby assumes and agrees to pay said mortgages and debts secured thereby, together with interest, as part of the purchase price of the above described premises."

Will you please examine that exhibit and tell me what mortgages are referred to by that paragraph just read?

A. A first mortgage that I had previously given to Mr. William F. Whitman, under date of August

8, 1923, securing a first obligation on this property, \$20,000. The second mortgage which I had subsequently given under date of March 18, 1926, for \$20,000, secured the note that I owed the Miami Beach Bank and Trust Company.

That assumption was put in there because the Bank of Bay Biscayne had authority to sell the collateral and deliver title to that property. They wanted the privilege of the right to apply all proceeds to the liquidation of those two mortgages. And I might add that I was never at any time relieved of liability on the mortgages, personal liability, because there was never any substitution of notes. It was drawn by the Bank of Bay Biscayne through their attorney, Mr. Freeman Burdine; or that office, Burdine, Terry & Fleming.

Miss Thelma Cain, Miss Lurline Jackson, and Miss Agnes Protho were the incorporators of Moline Properties, Inc.

Q. Do you know who represented the bank in the organization of this corporation?

A. My negotiations—I had one conference, I think, with Mr. Freeman Burdine, who headed the firm of Burdine, Terry & Fleming, and he was one of the old lawyers in the city, who represented for years the Bank of Bay Biscayne. Mr. Burdine is now dead, but his associates are still practicing law here in Miami.

That firm organized the corporation. Thelma Cain, Lurline Jackson, and Agnes Protho were stenographers in the office, and Miss Cain, who is now married, still works for Ed. Fleming. The loan was liquidated some time after the Bank of Bay Biscayne failed—after all the banks failed. My money was used to liquidate it. The \$20,000 loan from the Miami Beach Bank and Trust Company has been liquidated.

Q. I now hand you two papers and ask if you can identify those papers.

A. The first paper that I am testifying about is a satisfaction of mortgage from M. A. Smith, as liquidator of the Miami Beach Bank & Trust Company, satisfying the second mortgage that I gave to the Miami Beach Bank & Trust Company under date of the 18th of March, 1926, and it is the identical second mortgage about which I have previously testified. That satisfaction is dated the 29th of July, 1933.

The second instrument exhibited is a satisfaction from the same officer as liquidator, M. A. Smith, as liquidator of the Miami Beach Bank & Trust Company, satisfying and liquidating the first mortgage on the identical promises that I had previously given to William F. Whitman under date of the 28th of July, 1923, securing \$20,000, and which likewise was executed and dated the 29th of July, 1933, and both of them are recorded in the public records of this county.

THE BOARD MEMBER: What are they, releases?

MR. FELIX: Satisfaction of these mortgages given to the bank to secure this \$20,000 indebtedness.

THE BOARD MEMBER: There is a release there of the first mortgage to you, isn't there? Why does the bank sign that? I thought that was given to somebody else.

THE WITNESS: Your Honor, Mr. Whitman owned the first mortgage on this identical property, Block 77, and he demanded that it be paid, and the bank, to whom I was also obligated, had to buy

the Whitman mortgage to protect itself. That was done some time before, I don't know when, but some time before either of the banks closed. It was necessary for them to take up the first mortgage to protect their second obligation. So when the bank closed it sat holding both these mortgages, and they came into the possession of the liquidator of the bank.

(The two releases or satisfactions were thereupon offered and received in evidence as petitioner's exhibit No. 7.)

Both of the mortgages were satisfied with funds that I borrowed from National Investment Holdings, a Florida corporation. Check No. 1113, under date of June the 26th, '33, is from National Investment Holdings, Incorporated, to me for \$1500. Check No. 1123, under date of July the 17th, 1933, for \$4,000 from National Investment Holdings. That constituted the \$5500 that I borrowed from that corporation, and some of the funds—I should say most of the funds there—was used in liquidating these two obligations and in addition taxes that had accumulated against the property.

(The two checks were offered and received in evidence as petitioner's exhibit No. 8.)

The only available security to the National Investment Holding Company for the loan of this money represented by the checks which have just been introduced into evidence that I had was my block of property at the Beach, Block 77. I gave a mortgage securing this loan—I caused the corporation—and the stock was then turned back to me to execute the mortgage. My impression is that none of these papers ever came into my hands until the obligation of the Beach bank was paid off. The liquidators held onto these securities and delivered them back to me in 1933, when these two satisfactions went of record. I was directly in control of the corporation in 1933.



(A photostat copy of the recorded mortgage from Moline Properties, Inc., to the National Investments Holding, Inc., was thereupon offered and received in evidence as petitioner's exhibit No. 9.)

During the time that the bank had control of this corporation it became necessary to bring a suit to remove the restrictions, the deed restrictions, that had been placed on the property by Carl Fisher, when he developed Fisher's first subdivision. The firm of Evans and Mershon brought that suit.

The witness then identified a letter dated Mary 9, 1936, from Evans & Mershon and a schedule attached to the letter of payments made by Uly O. Thompson to the firm from time to time, beginning in 1933 up through the year 1936, aggregating \$2,500 and some dollars, and a statement of other payments made by the Miami Beach Bank & Trust Company, aggregating \$1500 in the year 1930, in relation to the suit about which he had previously testified. The letter was offered and received in evidence as petitioner's exhibit 10.

The \$1500 referred to represents the items on Petitioner's Exhibit No. 10 of March 15, 1930 and June 7, 1930. Those are the initial payments made by the Miami Beach Bank & Trust Company to Evans & Mershon on account of the \$5,000 fee that the bank agreed to pay them for bringing the suit and removing the restrictions on Block 77 after Moline Properties was incorporated. I was not even consulted about that except I had authorized bringing the suit before the corporation was formed, and I knew that fees would be charged against me. The loan which was made from National Investment Holdings, Inc., was paid by me. I sold a piece of property over which I had given them a mortgage to Simms Brothers at Miami Beach and paid them the loan on the date of the sale. I received \$40,000 cash and paid this loan out of the cash received.



(A photostat copy of a recorded satisfaction dated February 17, 1936, from National Investments Holdings, Inc., to Moline Properties, Inc., was offered and received in evidence as petitioner's exhibit No. 11.)

Moline Properties, Inc., never had a bank account and never had any books of account. The corporation had no assets except Block 77, the title to which I transferred to the corporation, for the purposes heretofore stated. At the time Moline Properties was organized I owned a home just across the street that I bought from Robert Hassler and paid him \$65,000 for it. I owned, I believe, 101 lots as I recall, down on Miami and Brickell Avenue between here and the Deering Estate. Some of those lots were not on the Avenue, but the blocks faced on the Avenue. I had three blocks there of lots, four blocks, that faced on the Avenue, either Brickell or Miami Avenue. I owned other scattered unimportant holdings. Block 77 at that time and my home at the Beach were the only properties that had any appreciable prospective value. No real estate had any value following the debacle here in 1926. The other property that I owned was in my name and any other property that I have owned was in my name. I never organized a corporation. I have organized probably a hundred or more for other people, but I never put anything that I bought in a corporate name, or my wife's name either.

Q. Judge Thompson, I hand you Petitioner's Exhibit No. 1 and direct your attention to minutes of a directors' meeting dated October the first, 1929, in which the following appears:

"Thereupon the president, Uly O. Thompson, announced to the meeting that the Bank of Bay Biscayne had offered to sell to Moline Properties, Inc., a certain note of Uly O. Thompson in the principal sum of \$43,000 and accrued interest of \$9,703.14, which is secured to the satisfaction of the board, the sale being made at par with accrued interest.

"Thereupon the following resolution was adopted by unanimous vote:

"Be it resolved that this company do purchase said note, and in order to obtain the proper funds therefor, that they borrow the money from the Bank of Bay Biscayne, giving its note therefor due on or before six months after date and pledging as collateral the said note, the mortgage of Uly O. Thompson which it is purchasing, together with 25 shares of capital stock of Moline Properties, Inc., which is the entire amount issued and which is already pledged to said bank."

I will ask you whether you were present at that meeting, Judge Thompson.

A. I was not present. I never heard of that minute until all of these mortgages were liquidated and papers turned back to me.

Q. I call your attention to the fact that that minute, in addition to being dated October the first, 1929, has the further inscription "10 o'clock a. m.". I now hand you what purports to be an assignment of mortgage from the Bank of Bay Biscayne to Moline Properties, dated October first, 1929, at 11 a. m., and ask you if you can identify the signature to that paper.

A. I know the signature quite well. It is by Mr. W. P. Duncan, vice president of the bank, and Mr. J. E. Lynn, cashier.

Q. And you know that they were those officers at that time?

A. I do.

(The assignment dated October 1, 1929, was there-

upon offered and received in evidence as petitioner's exhibit No. 12.)

(The witness thereupon identified his signature on an assignment of mortgage from Moline Properties, Inc., to the Bank of Bay Biscayne, dated October 1, 1929, which assignment was offered and received in evidence as petitioner's exhibit No. 13.)

Q. (BY MR. FELIX) Judge Thompson, I now direct your attention to the minute which I read a while ago by which the corporation authorized the purchase of your \$43,000 note from the Bank of Bay Biscayne and will ask you whether that note was secured by any real estate.

A. Yes, it was.

The assignments of mortgage introduced into evidence as Petitioner's Exhibits 12 and 13 cover the property that secured the payment of that note.

Q. Now, I direct your attention to this minute dated 10 o'clock October the first, 1929, and assignment of the mortgage from the bank to Moline Properties, dated 11 o'clock on the same day, October the first, 1929, and a reassignment back to the Bank of the same mortgage on the same day at 11:30 a. m., and ask you whether or not, so far as you know, any money was passed in this transaction.

A. Couldn't have been, because Moline Properties had no account and never had and never issued a check, since it has been organized. That is just some bank juggling. It caused them all to be indicted.

May I explain, Mr. Felix, I signed whatever the bank sent over there. I was obligated to the bank.

If they drew a paper and sent it over there I signed it. I never asked any questions. I was not in a position to ask questions. It related to Moline Properties. They had a voting trust to do as they pleased, and I had confidence in everything that the bank was doing. But that is a pure bogus piece of shenanigan.

The Block 77 property has been sold. Moline Properties doesn't hold title to it. It was sold in three separate parcels, Mr. Felix. I don't recall the exact dates. The first sale was made in 1934. The second sale was made in 1935, and the last sale disposing of all of the property, was in 1936, the early part of '36. I received the money from those sales. I deposited it in my bank account. I recognize the book you hand me as my passbook, I believe you call them, at the First National Bank of Miami, Florida. The entry on February 15, 1936, of \$29,832.81 was the net amount coming to me from the sale of this property at the Beach, the remaining portion of Lot 77, less this National Investment Company mortgage and some taxes and things that I had to clear up. This book shows this to be the account of Uly O. Thompson. The 1934 sale of the first piece was reported for income tax purposes by Moline Properties. As I recall, there was no taxable taxes due on that, whether reported by me or the corporation. I didn't think anything about it, the question of taxes. The 1935 return or sale to the Collins Avenue Improvement Corporation was reported by the corporation. The 1936 sale was reported by me as an individual.

I was on the bench at the time. I was one of the Circuit Judges here in this county, was on the bench, and we were exceedingly busy. I never made out an income tax return in my life. I knew nothing about income tax law and didn't undertake to know. I had engaged Mr. Smethurst, auditor, of the city here, to make my returns. He came to my office in the Court-

house. My secretary handed him a closing statement on the first sale that was made in 1934, a typewritten copy of the closing statement that I always kept.

The same thing happened in the sale of 1935. I didn't even discuss the matter with Mr. Smethurst. He made up the returns and sent them down to my office and I signed them, I think for the corporation. I think I am the one that signed them as president of the corporation. Subsequent to the return in 1935 there was some taxes due there, and Mr. Smethurst contacted me one day and told me that some court or the Department had made a ruling that he was convinced that entitled me to make individual return of that; in the meantime he had found out the character of the corporation and that if it was a pure receptable to hold title to this property that I had a right to file an individual return, and that I ought to file a claim for refund or for the recapture of the taxes that I had paid in '35. That was subsequently done. The '36 sale came along, and, acting upon the advice of my auditor, we prepared and filed a personal return for Uly O. Thompson, rather than a corporate return.

The 1934, 1935 and 1936 income tax returns and 1935 amended income tax return of the petitioner were offered and received in evidence as Respondent's exhibits A, B, C and D. The 1935 and 1936 income tax returns of Uly O. Thompson were offered and received in evidence as Respondent's Exhibits E and F.)

I was a Circuit Judge of this Circuit up to about the middle of 1935, when the office was abolished by an act of the legislature. I went back into the practice, I think, in December, 1936. The time between July '35, when the recircuiting act of the state abolished the office that I held, and December 1936, I was engaged in some litigation with the Attorney General as to the constitutionality of the Act. I was a Judge of the Circuit Court all during the year 1934. If I had any income

at all aside from my salary it was nominal. Whatever it was, it was reported. I am a married man and was married that time. I understood my salary was exempt. In 1934 my income aside from salary must have been very limited, if any. I have no independent recollection of it. I should think it was very much less than a thousand dollars. I have no independent recollection. The State of Florida, state office, paid my salary as a judge for that year.

On cross examination the witness testified as follows:

Q. (BY MR. VAN HAAFTEN) Mr. Thompson, I show you Petitioner's Exhibit 5 and refer you to the 15th paragraph of that document. Was that note ever paid?

A. Yes, the \$6750 note. It was liquidated. After the bank closed it was liquidated for some nominal sum.

It was settled for some nominal sum with the liquidator. I previously testified that in my opinion the stock and these minute books and things were never returned to me until the mortgages at the Beach were likewise paid. After the execution of this trust agreement the deeds were actually delivered to the Moline Properties, and the deed that they caused me to deliver called for Moline Properties to assume and agree to pay the debt. It might have been almost a simultaneous transaction, but this voting trust was something that went along with the corporation. I can not off hand recall the exact date when the matter of the payment of the note was settled. I settled these matters with the liquidators as fast as I could get hold of money to pay them, and that note was one of them and I paid it. I don't think the Bank of Bay Biscayne liquidator has been discharged. If he has, I don't know about it.



Q. Referring to Petitioner's Exhibit No. 1, which has been identified as the minute book of the corporation, I refer you to the last paragraph of the minutes. Would you read that,

THE WITNESS: "Mr. Sterne reported"—might I say that Mr. Sterne was vice president of the bank of Bay Biscayne, and he is the one who held the voting trust, "Mr. Sterne reported the loan of this company to Bank of Bay Biscayne. \$6750 is still unpaid. But that this company had a deal on through condemnation proceedings for part of Beach lot, and if this goes through the company will have money to liquidate the note."

The condemnation proceedings took place. The company received \$6500, as I recall, and I don't think that the Bank of Bay Biscayne got a nickel out of it. My recollection is that the Clerk of this Court handed me, as president of Moline Properties, a check, and it was applied in our opinion to the—sent over to the Beach bank. I don't know. That money was received and turned over to one of my creditors, either the Bank of Bay Biscayne or the other one over at the Beach. I don't want to be bound with the reading of that minute. I had nothing to do with drawing it up, but I know where the money went.

The Moline Properties has no books or records at all except what the bank kept. I have nominal records that I always keep in my office. I used to keep a complete set of books, but my business does not warrant it and I don't keep them any more, and I am not a bookkeeper. In 1935, 1936 and 1937 I kept records that were satisfactory to me, that I could explain anything you want to ask about.

I said that during the year 1934 my recollection was that if I had any independent income aside from a salary, that it would be less than a thousand dollars. I

don't recall any. I might have had a thousand dollars and might have had more. But I wouldn't undertake to—my reports ought to be the best evidence of it; I mean what I declared. I think it was during 1933 or some time subsequent to that time that the amount that was due and owing with respect to the \$6,750 was paid. Certainly it was not before 1933, in my opinion.

Now, may I say this, about income: I owned a lot of property on the south side here, and previously I testified that I thought it had little value. I would like to say this, that the property was subsequently sold and I received some income from it. It was all in my name. Now, when the property was sold I don't know, but I did receive income from those sales as they were made. Most of it went to the payment of taxes. And my observation about the property not being worth anything then, that some twenty odd thousands of dollars and taxes had accumulated against the property, and I was not in position to borrow money to pay the taxes. The City of Miami and I think the State went on a project in after years of compromising these taxes, and in that way only was I able to get anything out of any of the properties.

Q. Without getting down to any particular detail, about how long would you say that you had paid off—or that this money was paid off—before the loan was made or the transaction was made with National Investment? Would it be a month or six months or a year?

A. I think the loan to the National Investment was made in 1933, as I recall. The papers, I believe, are introduced in evidence, and I think that this debt was paid off in the year 1933.

I don't have any independent recollection definitely when it was paid. My testimony, as I recall it was that it occurred some time before that time. Foreclosure pro-



ceedings were somewhat cumbersome, and the bank might have anticipated. I don't know what they had in mind. They might have had some difficulty in foreclosing. But they wanted to get the property, and it was solely for the benefit of the bank—get the property of that Block 77, which was a more or less—had potential values, if we could get restriction on it—in the hands of the bank, so that they could handle it as they saw fit; and they proceeded to do that. If they got an opportunity to sell it, it was my understanding that they could sell the stock of the corporation and pass title over to anyone that would pay them enough for it. If they required my consent it would have been a very easy matter to have had it, I think, although there was some understanding that they were not going to foreclose. I was not trying to delay the bank or defeat the bank in the collection of its moneys. I permitted them to form this corporation at their suggestion and because they wanted it that way. I was always a stockholder of this corporation. No one else ever owned any interest at all in the corporation except Uly O. Thompson.

Q. Now, when checks were made to the Moline Properties at any time were you ever asked to pass a resolution in order to protect the bank in cashing those checks?

A Yes, sir. My recollection is that I undertook to furnish the Department when this matter first came up with that information. When this transaction was closed, the purchasers—the title was in the name of Moline Properties, and Mr. Simms is a business man of extensive experience, and he refused to make a check except payable to Moline Properties. I was president of Moline Properties. I endorsed the check and took it downstairs in the First National Bank to deposit it to my account, and Mr. Oliver, the executive president of the bank, refused to accept it. He said they were not permitted to accept these deposits. He said that, while

he knew it was my corporation, the transaction had been through the bank or through the firm of Evans and Mershon upstairs in the bank; that I would have to get a resolution from the other stockholders of the corporation saying that it was my money, and my brother and my secretary signed that resolution. I drew up something to satisfy the bank. Then I took the check in there and deposited it.

The company is still in existence unless it has been dissolved by operation of law, proclamation of the Governor of the State. If you want to call a corporation in existence—it has no assets, and I have never made any returns of capital stock since it paid any state stock taxes, since the sale was made. The 1935 tax of this corporation has not been fully paid, because I was advised that I was entitled to recapture what I had paid and file whatever you call it, a petition, to recapture the tax. Since that time I have not paid any. I have no independent recollection of income of rents of a thousand dollars shown on the 1934 income tax return. Mr. Smethurst has the information, I am sure. He made the return. I wish I could tell you, but I can't. I don't believe I have ever read the charter of the corporation. It is in evidence. If it is not in evidence, I will be glad to get it for you. I should imagine, though, it permitted the corporation to engage in all kinds of business.

Q. (By MR. VAN HAAFTEN) I will hand you the charter, what purports to be the charter of the corporation, and ask you in a general way what this corporation was incorporated for.

A. Everything under the sun—build streets, roads, improve houses, buy, sell, or own, control, develop, improve, pledge, mortgage, lease, sell, or otherwise acquire, handle, hold, and dispose of real estate and personal property—whatnot—practically everything in the world. Its general powers—rather specific and general powers, and specific powers

were largely enumerated. I never saw the charter until after all of these matters were settled up. I did not subscribe to it that I know of.

Q. In order to clarify the record, I understood you to say on direct examination that you made the loan, or you rather acquired \$5500, which was upon or from the National Investment Holdings Company—that you did that personally?

A. That I borrowed the money? Yes, I did.

Q. I refer to the minutes of July 15, 1933, and ask you to read those and see if that changes your testimony on that point.

A. I am familiar with the minute that you refer to, and that is a minute that I wrote up after this loan was made and the mortgage was recorded and everything, and sent it to the National Investors just to complete their records, and after this book was returned to me and I caused that to be put in there. That minute is a formal authorization of Moline Properties to negotiate the loan.

Q That indicates, though, that the loan was made by Moline Properties?

A. The minute does, yes sir, but the checks were payable to me, and they are in evidence. That was security that I offered these people and told them I would give them, and I drew that minute without their suggestion. I was attorney for them, and I felt that they ought to have it.

I owned considerable property in my own name at about this time. It was encumbered. Some of it was improved property, consisting of some farm lands in Georgia, and the rest of it was unimproved property consisting of lots I testified about, and my home at the Beach. The only way that I could estimate my net equity in

my personal property aside from my home during these years—and I think if you are familiar with conditions here at the time—would be what you afterwards actually sold it for and got out of it. It would be a pure hazard for any human being to estimate what the equity was in any property at that time. I afterwards compromised tax matters on the property down here and received several thousand dollars out of the sale of those properties. But the taxes upon an estate were in excess of the value of the property on some of it, because I know those appraisals were furnished by reputable realtors here in the city and liquidator of the bank before the bank would settle with me. There were three sales involved in the division of this Block 77.

I specifically made the return in 1936 as an individual return for the purpose of saving money. I was advised that I had a right to do it. And I so explained on the income tax return. I wouldn't sign it until Mr. Smethurst put that on there. Probably he suggested it. Anyway, it went on. I owned the corporation, if it was a corporation. No one ever owned any interest in it except me.

Q. Let me ask a question as to the payment of the 1935 corporation tax. I am not sure about the matter. Do you know whether or not the question of your filing these other amended returns and your personal returns which were filed, I believe, in 1937—some of them were filed in '37—whether that was caused by the effort of the Internal Revenue Bureau to collect the unpaid balance of the Moline Properties tax?

A. I really have no information at all about it. Whatever returns were filed—I would have filed a dozen returns if Mr. Smethurst had told me to. He was handling those matters for me. I simply filed whatever Mr. Smethurst advised me was necessary or proper to file. I think Mr. Smethurst could explain your question, I wish I could.

On redirect examination the witness testified as follows:

At the date I got back the corporation from the bank, the suit for removal of restrictions was still pending. My recollection is it was settled some year or two afterwards. It went to the Supreme Court two or three times, and I finally won it, and I think that it was shortly before the Supreme Court handed down its final decision, in my opinion shortly before, I sold the property to Mr. Simms, and I think that sale was in the early part of 1936. The corporation has not entered into any activity since the sale of the property. Could not. Didn't have any money. Neither of the other two stockholders of record of the corporation received any of the money which was paid for the purchase of Block 77. I received all of it, at all times; and I paid all expenses.

Q. Now, Judge Thompson, will you tell me when you paid the bank and received the stock book and the corporate records back from the bank—will you tell me why you didn't dissolve that corporation?

A. Couldn't dissolve it. It would have been a violation of law to attempt to dissolve it. You can't dissolve a corporation in Florida that owes a debt. The law requires you, if you desire to dissolve a corporation, to file a petition in court citing who the stockholders are and all the stockholders agree to it and the corporation owes no debts; and this corporation owed \$40,000 to that liquidator over there.

After that it owed this other, and I couldn't get the money from the National Investors until this mortgage was paid on there. The title was there and stayed there.

May I explain something about that dissolution? I think that is something that concerns the hearing. After

the property was sold, after I sold the last piece of property, there was the shell of this corporation. I didn't dissolve it simply because under operation of law it would automatically dissolve. It had sold all of its assets. All of the stock had previously been issued. It sold all of its assets, and the corporation had no stock to sell and couldn't raise money for any purpose; and the Supreme Court of this state has held, I think quite repeatedly, that where all of the assets of the corporation are sold the corporation is dissolved. It would have to be revived some way or another.

On cross-examination the witness further testified as follows:

My recollection is that the condemnation suit, which was brought some time before, was brought in the name of the—the city of Miami Beach brought that. The corporation didn't do that. I think it was brought against the corporation. That is my recollection. I think the corporation was a party to both suits.

BENJAMIN M. SMETHURST, a witness on behalf of the petitioner, was duly sworn and testified as follows:

I am a public accountant and have been practicing accountancy since 1921. I prepared them the several corporate and individual returns heretofore introduced into evidence by the respondent and which you now hand me. I was associated with a lawyer in my business at this time in the early part of 1935, and he came to my office, I can't remember whether it was just before the 15th of March or just before the 15th of April, and told me that Judge Thompson had a corporation that had to have an income tax return prepared. My notation on my pencil copy of the return is that I was down there on the 13th day of April, which indicates that that year, 1934, was a blanket extension year, or that Judge Thompson had received a 30-day extension for filing.



And on the 13th day of April I went to Judge Thompson's chambers. I didn't even see the Judge; I saw his secretary. Judge Thompson at that time was on the bench. I don't know whether he was at the very moment conducting a hearing or not. But I went to see his secretary, and she handed me a closing statement, and I sat down with her for possibly five minutes and returned to my office and prepared this income tax return for the corporation for the calendar year 1934. It indicates it was delivered back to him on the 15th day of April, 1934, for signature.

In 1935 this return was prepared on the 16th day of March, 1935, which indicates that March 15 must have been a Sunday and was sent back down to him after typing on the 15th of March; and the same thing occurred in 1935 as had occurred in 1934, to the best of my knowledge. I don't believe that I saw Judge Thompson. I might have in 1935. I know I did not in '34.

In the early part of '36, some time before the summer, either in connection with working on another tax case or something else, the case of Stuart Forshay was called to my attention, which was a Board of Tax Appeals case having to do with dummy corporations. I had learned a little bit more about Moline Properties, and I went to Judge Thompson and I said, "Judge Thompson, in my opinion those two sales just never have been recorded by the corporation. Moline Properties is just as much a dummy corporation as anything could be." And I suggested to him that we write a letter to the Commissioner and state the facts to the Commissioner of Internal Revenue and ask for an opinion from the Commissioner of Internal Revenue as to whether or not we had properly reported them in the corporation return, or they should have been reported by Judge Thompson. I dictated that letter myself. I have a copy of it. I did not sign it, however, I had no power of attorney, and the—I received a reply from the Commissioner. I have the original reply.

Q. Will you let me have the original reply and the carbon copy of the original letter ?

A. (The witness handed documents to counsel.)

MR. FELIX: I now offer into evidence as Petitioner's Exhibit No. 14 the letters just handed me by the witness.

MR. VAN HAAFTEN: I object, Your Honor, to the introduction of these documents. It is immaterial what the Commissioner wrote to this man at that particular time in response to this letter. The notice of deficiency shows the position of the Commissioner.

THE COURT: Let me see it.

(The documents were handed to the Court.)

MR. FELIX: Might I say a word, Your Honor, that I think will save time?

THE COURT: Very well.

MR. FELIX: We are not introducing these letters with any idea of any effect they might have on the merits of the case. We are simply introducing them to corroborate the circumstances under which the corporation ceased making returns and the individual stockholder began making returns. It is merely corroborative of the circumstances under which this change was made, corroborating this witness' testimony, and not having any relation to the merits of the case.

THE COURT: Well, I suppose they may go in for that reason. There is no opinion expressed.

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MR. FELIX: No opinion expressed in letter.



THE COURT: Let it be received.

(The documents referred to were marked "Petitioner's Exhibit 14".)

I heard Mr. Thompson testify and I heard Government counsel ask him in regard to certain rents.

Q. Do you know of your own knowledge what those rents represent?

A. I may have the 1934—(document was handed to the witness) my pencil copy? Where did it go to? The thousand dollar rent is also on our typewritten statement marked "Lease". I happen to know of my own knowledge that that was the rental either one or parts of two lots which I believe was used for parking purposes.

Q. Were those lots a part of this Block 77?

A. To the best of my knowledge, they were, yes.

On cross examination the witness testified as follows:

I made out the amended income tax return for the year 1935 in 1938. It was sworn to on December second, 1938. I do not know whether or not the reason this came to my attention was because the deputy collector was endeavoring to collect some of the original 1935 tax. The reason that I brought it to the Judge's attention, as I testified a few minutes ago, was the fact that this Forshay case had been brought to my attention, either in connection with some other tax matter or in reading a tax service or getting a letter. I get the Alexander Tax News Letter. I don't know just how that was brought to my attention, but, as a matter of fact, I didn't know, and didn't know for a long time, that the 1935 tax had not been paid. This was 1938 when I filed this amended 1935 return. But in 1935 the return

was due in March of 1937. No corporation return was filed for 1936, other than an inactive return.

Whereupon both parties rested and the proceeding was submitted to the Board Member for decision.

The foregoing statement, together with the exhibits referred to therein, constitutes all of the material evidence adduced at the hearing before the United States Board of Tax Appeals and the same is hereby approved by the undersigned.

(Signed)

J. P. WENCHEL,  
Chief Counsel,  
Bureau of Internal Revenue,  
Attorney for Petitioner on Review.

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Attorney for Respondent on Review.

Approved and ordered filed March 28, 1942.

(S) C. R. ARUNDELL,  
Member, United States Board of Tax Appeals.

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#### CERTIFICATE OF MAILING

The undersigned, counsel for petitioner on review, hereby certifies that on the 20th day of March, 1942, a copy of the foregoing document entitled "Statement of Evidence" was mailed to Douglas D. Felix, Esq., Congress Building, Miami, Florida, as counsel for respondent on review.

Dated this 20th day of March, 1942.

CHAS. E. LOWERY,  
Special Attorney,  
Bureau of Internal Revenue.

United States Board of Tax Appeals

Received

Mar 27 1942

Filed

Mar 27 1942

IN THE UNITED STATES CIRCUIT COURT OF  
APPEALS FOR THE FIFTH CIRCUIT

GUY T. HELVERING, Commissioner of Internal Revenue, Petitioner on Review, v. MOLINE PROPERTIES, INC., Respondent on Review.	}	B. T. A. Docket No. 103862
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NOTICE OF LODGING STATEMENT OF  
EVIDENCE

To: Douglas D. Felix, Esq.,  
Congress Building,  
Miami, Florida.

You are hereby notified that the Commissioner of Internal Revenue, the petitioner on review, did, on the 20th day of March, 1942, lodge with the Clerk of the United States Board of Tax Appeals at Washington, D. C., a statement of evidence in the above-entitled cause. A copy of the statement of evidence as lodged is hereto attached and served upon you.

Dated this 20th day of March, 1942.

(Signed) J. P. WENCHEL,

RLW

Chief Counsel,  
Bureau of Internal Revenue.

Service of the foregoing notice, together with a copy of the statement of evidence mentioned therein, is hereby acknowledged this 24 day of March, 1942, and agreed to.

(Sgd.) DOUGLAS D. FELIX,  
Counsel for Respondent on Review.

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U. S. Board of Tax Appeals

Div. 7, Docket 103862

Admitted in Evidence

Jan. 8, 1941

Petitioner's Exhibit 1

### COPY OF CHARTER

We, the undersigned, do hereby associate ourselves together for the purpose of becoming a corporation under the laws of the State of Florida, by and under the provisions of the Statutes of said State providing for the formation, rights, privileges and immunities of a corporation for profit.

#### ARTICLE I.

The name of this corporation shall be Moline Properties, Inc. (hereinafter referred to as the "Corporation").

#### ARTICLE II.

##### NATURE OF THE BUSINESS

The general nature of the business and the objects and purposes proposed to be transacted, promoted or

carried on are to do any and all of the things herein-after mentioned, as fully and to the same extent as natural persons could do, viz:

(a) To buy, own, hold, control, develop, improve, pledge, mortgage, lease, sell or otherwise acquire, handle, hold and dispose of real estate and personal property, or any interest therein: to construct, equip, repair and improve houses, buildings, streets, sidewalks, reservoirs, waterworks, sewers, docks, fills and other structures and improvements of any kind or character whatsoever; to lay off, plat and subdivide lands into lots and blocks and to dedicate parks, streets, highways and alleyways thereon.

(b) Generally to conduct a real estate business and to acquire and deal in real estate in such manner as natural persons might or could do.

(c) To acquire by purchase, subscription or otherwise and to hold for investment, and to own, hold, sell, vote and handle shares of stock in other corporations.

(d) To guarantee, to acquire by purchase or otherwise, any bonds, securities, or evidences of indebtedness issued or created by any other corporation or by any State or Government, domestic or foreign, and to exercise any and all of the rights, powers and privileges of ownership which a natural person might do; to aid by loan, subsidy, guaranty, or in any other manner whatsoever so far as the same may be permitted by law, any corporation whose stocks, bonds, securities or other obligations are or may be in any manner and at any time owned or held or guaranteed and to do any and all other acts or things for the preservation, protection, improvement or enhancement in value of such stocks, bonds, securities or obligations.

(e) To borrow money and contract debts when necessary for the transaction of its business for the exercise of its corporate rights, privileges or franchises, or for

any other lawful purpose of its incorporation; to issue bonds, promissory notes, bills of exchange, debentures, and other obligations and evidences of indebtedness payable at a specified time or times, or payable upon the happening of a specified event or events, secured or unsecured, from time to time, for moneys borrowed, or in payment for property acquired, or for any of the other objects of its business; to secure the same by mortgage or mortgages, or deed or deeds of trust, or pledge or other lien upon any or all of the property, rights, privileges or franchises of the Corporation, wheresoever situated, acquired or to be acquired; and to confer upon the holders of any debentures, bonds or other evidences of indebtedness of the Corporation, secured or unsecured, the right to convert the principal thereof into any preferred and/or common stock of the Corporation, now or hereafter authorized, upon such terms and conditions as shall be fixed by the Board of Directors; to sell, pledge, or otherwise dispose of any or all debentures or other bonds, notes and other obligations in such manner and upon such terms as the Board of Directors may deem judicious.

(f) To manufacture, purchase or otherwise acquire, to hold or own, to mortgage, sell, pledge, assign, transfer or otherwise dispose of, and to invest, trade and deal in goods, wares and merchandise and property of every class and description necessary or incidental in carrying out the business of the Corporation.

(g) To have one or more offices, conduct its business and promote its objects within and without the State of Florida, in other states, the District of Columbia, the territories, possessions and dependencies, of the United States and in foreign countries, without restriction as to place or amount.

(h) To do all and everything necessary and proper for the accomplishment of any of the purposes or the attaining of any of the objects or the furtherance of any

of the powers enumerated in this certificate of incorporation or any amendment thereof, necessary or incidental to the protection and benefit of the Corporation, as principal, agent, director, or otherwise, and in general, either alone or in association with other corporations, firms or individuals, to carry on any lawful business necessary or incidental to the accomplishment of the purposes or the attainment of the objects or the furtherance of such purposes or objects of the Corporation, whether or not such business is similar in nature to the purposes and objects set forth in this certificate of incorporation or any amendment thereof.

(i) The enumeration herein of the powers, objects and purposes of the Corporation shall not be deemed to exclude by inference any powers, objects or purposes which the Corporation is empowered to exercise, whether expressly by force of the General Corporation Laws of the State of Florida, or impliedly by the reasonable construction of the said laws.

### ARTICLE III.

#### CAPITAL STOCK

The amount of the total authorized capital stock of the Corporation shall be twenty-five (25) shares of common stock, without nominal or par value. The whole or any part of the capital stock of said corporation shall be payable in lawful money of the United States of America, or in property, labor or services at a just valuation to be fixed by the directors. Property or labor may also be purchased with the capital stock at such valuation as shall be fixed by the directors.

### ARTICLE IV.

#### AMOUNT OF CAPITAL WITH WHICH TO BEGIN BUSINESS OF CORPORATION

The amount of capital with which the Corporation



shall begin business shall be Five Hundred Dollars (\$500.00).

## ARTICLE V.

### CORPORATE EXISTENCE

The Corporation shall have perpetual existence.

## ARTICLE VI.

### PRINCIPAL OFFICE AND RESIDENT AGENT

The principal place of business of said Corporation is to be located in Miami, Dade County, Florida, with the privilege, however, of having branch offices and places of business at any other place or places within or without the State of Florida, or in foreign countries. R. F. Burdine of Miami, Florida, is hereby designated as Resident Agent of the Corporation, as required by law.

## ARTICLE VII.

### NUMBER OF DIRECTORS

The affairs of the Corporation shall be conducted by a board of not less than three nor more than five directors who need not be stockholders.

## ARTICLE VIII.

### DIRECTORS

The names and post office addresses of the first board of directors of the Corporation, who subject to the provisions of this certificate of incorporation and the by-laws and General Corporation law of the State of Florida, shall hold office for the first year of the Corporation's existence, or until their successors are elected and have qualified, are as follows:



Name	Post Office Addresses
Thelma Cain,	Bank of Bay Biscayne Bldg., Miami, Florida;
Lurline Jackson,	Bank of Bay Biscayne Bldg., Miami, Florida;
Agnes Protho,	Bank of Bay Biscayne Bldg., Miami, Florida.

## ARTICLE IX.

NAMES AND POST OFFICE ADDRESSES  
OF SUBSCRIBERS

The names and post office addresses of each subscriber of this certificate of incorporation, and a statement of the number of shares of stock which they agree to take are as follows:

Name.	Post Office Addresses	No. of Shares
Thelma Cain,	Bank of Bay Biscayne Building, Miami, Florida.	3
Lurline Jackson,	Bank of Bay Biscayne Building, Miami, Florida.	1
Agnes Protho,	Bank of Bay Biscayne Building, Miami, Florida.	1

## ARTICLE X.

## SPECIAL CHARTER PROVISIONS

The original incorporators of the Corporation shall have the right upon its organization, to assign and deliver their subscriptions of stock as set forth in Article IX hereof to any other persons, or to firms, or corpora-

tions who may hereafter become subscribers to the capital stock of the Corporation, who, upon acceptance of such assignment, shall stand in lieu of the original incorporators, and assume and carry out all the rights, liabilities and duties entailed by said subscription, subject to the laws of the State of Florida and the execution of the necessary instrument of assignment.

The number of directors of the Corporation may be increased or decreased to not less than three (3) as may be provided by the bylaws. The bylaws may prescribe the number of directors necessary to constitute a quorum of the Board of Directors, which number may be less than the majority of the whole board of directors. In case of any vacancy in the board of directors, through death, resignation, disqualification, or other cause, such vacancy shall be filled for the unexpired term by the affirmative vote of a majority of the remaining directors. In case of any increase of the number of directors, the additional directors shall be elected by the affirmative vote of a majority of the directors then in office.

In furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized:

(a) Subject to the bylaws, if any, adopted by the stockholders, to make, alter, amend or repeal the bylaws of the Corporation.

(b) If the bylaws so provide, to designate by resolution two or more of their number to constitute an Executive Committee, which Committee to the extent provided in the resolution or in the bylaws of the Corporation, shall have and may exercise any or all of the powers of the Board of Directors in the management of the business, affairs and property of the Corporation, during the intervals between the meetings of the board of directors, so far as may be permitted by law.

(c) From time to time to determine whether and to

what extent and at what times and places and under what conditions and regulations the accounts and books of the Corporation (other than the stock ledger) or any of them shall be open to inspection of stockholders and no stockholder shall have any right of inspecting any account, book or document of the corporation except as conferred by statute, unless authorized by a resolution of the stockholders or directors.

The corporation may at any meeting of its Board of Directors, sell, lease or exchange all of its property and assets, including its good will and its corporate franchises, or any property or assets essential to its corporate business, upon such terms and conditions, either for cash, for the securities of any other corporation or corporations, or for such other consideration as its Board of directors may deem expedient and for the best interest of the Corporation when and as authorized by the affirmative vote of the holders of record of at least two-thirds of the stock of each class issued and outstanding given at a stockholders meeting duly called for that purpose, or when authorized by the written consent of the holders of record of at least two-thirds of the stock of each class issued and outstanding.

Both stockholders and directors shall have power, if the bylaws so provide, to hold their meetings either within or without the State of Florida, to have one or more offices and to keep the books of the Corporation, subject to the provisions of the laws of the State of Florida, within or without the State of Florida, at such places as may from time to time be designated by the Board of directors.

No contract or other transaction between the Corporation and any other corporation in the absence of fraud, shall be affected or invalidated by the fact that any one or more of the directors of the Corporation is or are interested in, or is a director or officer or are directors or officers of such other corporation, and any director or directors, individually or jointly may be a

party or parties to, or may be interested in, any such contract or transaction of the Corporation or in which the Corporation is interested and no contract, act or transaction of the Corporation with any person or persons, firm or corporation in the absence of fraud, shall be affected or invalidated by the fact that any director or directors of the Corporation is a party or are parties to or interested in such contract, act or transaction, or in any way connected with such person or persons, firm or corporation, and each and every person who may become a director of the Corporation is hereby relieved from any liability that might otherwise exist from thus contracting with the corporation for the benefit of himself or any firm, association or corporation in which he may be in anywise interested. Any director of the corporation may vote upon any contract or other transaction between the Corporation and any subsidiary or controlled company without regard to the fact that he is also a director of such subsidiary or controlled company.

IN WITNESS WHEREOF, the undersigned have made and subscribed this certificate of incorporation, at Miami, Florida, for the uses and purposes aforesaid, on the 24th day of May, A. D. 1928.

THELMA CAIN (Seal)  
 LURLINE JACKSON (Seal)  
 AGNES PROTHO (Seal)

STATE OF FLORIDA, )  
 COUNTY OF DADE. )

Personally appeared before me, the undersigned authority, THELMA CAIN, LURLINE JACKSON and AGNES PROTHO, each of whom is to me well known and known to me to be the persons described in and who executed the foregoing certificate of incorporation, and each of them acknowledged before me, according to

law, that they made and subscribed the same for the uses and purposes therein mentioned and set forth.

WITNESS my hand and official seal, this 24th day of May, A. D. 1928.

NOLIE C. MURRAY

Notary Public, State of Florida, at large.

My Commission Expires: July 2, 1929.

(N. P. Seal)

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STATE OF FLORIDA

OFFICE OF SECRETARY OF STATE

I, H. CLAY CRAWFORD, Secretary of State of the State of Florida, do hereby certify that the above and foregoing is a true and correct copy of Certificate of Incorporation of MOLINE PROPERTIES, INC., a corporation organized and existing under the laws of the State of Florida, said certificate of incorporation having been filed in the office of the Secretary of State of the State of Florida, on May 25, 1928, as shown by the records of this office.

GIVEN under my hand and the Great Seal of the State of Florida, at Tallahassee, the Capital, this the twenty-eighth day of May, A. D. 1928.

H. CLAY CRAWFORD,  
Secretary of State.

(Great Seal of the  
State of Florida)

October 1st, 1929.

10:00 o'clock, A. M.

## MOLINE PROPERTIES, INC.

### MINUTES OF DIRECTORS MEETING

The Directors of Moline Properties, Inc., met in the Office of Uly O. Thompson, on the fifth floor of the Bank of Bay Biscayne Building, at ten o'clock, A. M., on Tuesday, October 1st, 1929.

There were present:

R. K. Mixson

A. E. Bolt

Edwin Sterne

Mr. Sterne acted as Chairman of the meeting and Mr. Bolt as Secretary thereof.

Thereupon, the President Uly O. Thompson announced to the meeting that the Bank of Bay Biscayne had offered to sell to Moline Properties, Inc., a certain note of Uly O. Thompson, in the principal sum of \$43,000.00 and accrued interest of \$9703.14, which is secured to the satisfaction of the Board, the sale being made at par with accrued interest.

Thereupon the following resolution was adopted by unanimous vote:

"BE IT RESOLVED: That this Company do purchase said note and in order to obtain the proper funds therefor, that they borrow the moneys from the Bank of Bay Biscayne, giving its note therefor due on or before six (6) months after date, and pledging as collateral the said note and mortgage of Uly O. Thompson, which

it is purchasing together with Twenty-five shares of Capital Stock of Moline Properties, Inc., which is the entire amount issued, and which is already pledged to said bank."

There being no further business, the meeting adjourned.

EDWIN STERNE  
Chairman

AGNES E. BOLT  
Secretary.



Form 1120  
TREASURY DEPARTMENT  
INTERNAL REVENUE SERVICE

*Self-Dealing*  
**FORM 1120 MUST BE FILED WITH THIS RETURN**  
**CORPORATION INCOME AND EXCESS-PROFITS TAX RETURN**  
**For Calendar Year 1934**

Page 1 of Return

or Fiscal Year begins 1934, and ended 1934

PRINT PLAINLY CORPORATION'S NAME AND BUSINESS ADDRESS

**MOLINK PROPERTIES, INC.**

**1512 Collins Avenue**

**Miami Beach, Florida**

Total Number **855090**

State **Florida**

District

(Indicate a District)

It is Required, Except Where Otherwise Provided in the Instructions, That This Form be Completely Filled In irrespective of Any Statements, Schedules, or Reports Submitted Herewith

Date of Incorporation **1928**

**Florida**

Under the Laws of what State or Country

The corporation's books are in Care of

located at

Is or is not a Railroad Corporation

**Not a Railroad Corporation**

Is This a Consolidated Return of Railroad Corporation?

Is or is not a Non-Railroad Corporation

Is or is not a Foreign Corporation

Is or is not a Nonresident, State Amount of Income Excluded

From Gross Income \$

Is or is not a Corporation as defined in Section 1361 of the Revenue Act of 1934?

**No**

Is or is not an additional return on Form 1120-10 must be filed

**SECTION 1361-1362 INCOME**

1. Gross income, before deduction for depreciation, depletion, and amortization, less: **1361**

2. Deductions at beginning of year

**1362**

3. Material in American law freight for transportation of sale

Material in American law freight for transportation of sale

Material in American law freight for transportation of sale

Material in American law freight for transportation of sale

Material in American law freight for transportation of sale

Material in American law freight for transportation of sale

Material in American law freight for transportation of sale

4. Material in American law freight for transportation of sale

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33. Material in American law freight for transportation of sale

34. Material in American law freight for transportation of sale

35. Material in American law freight for transportation of sale

**DEDUCTIONS**

**15**

- 24. Impairment of Mine, and tax With Timber, etc.
- 25. Impairment of Mine, and tax With Timber, etc.
- 26. Impairment of Mine, and tax With Timber, etc.
- 27. Impairment of Mine, and tax With Timber, etc.
- 28. Impairment of Mine, and tax With Timber, etc.
- 29. Impairment of Mine, and tax With Timber, etc.
- 30. Impairment of Mine, and tax With Timber, etc.
- 31. Impairment of Mine, and tax With Timber, etc.
- 32. Impairment of Mine, and tax With Timber, etc.
- 33. Impairment of Mine, and tax With Timber, etc.
- 34. Impairment of Mine, and tax With Timber, etc.
- 35. Impairment of Mine, and tax With Timber, etc.



Beginning of Taxable Year

End of Taxable Year

Item

Amount

Total

Amount

**ASSETS**

\$

\$

7

\$

\$

2





**SCHEDULE A** (See Instructions 2 and 8)

COST OF SALES WHERE INVENTORIES ARE AN INCOME-DETERMINING FACTOR		A COST OF OPERATIONS (WHERE INVENTORIES ARE NOT AN INCOME-DETERMINING FACTOR)	
From	Amount (Enter on line 9a)	From	Amount (Enter on line 9a)
Cost of sales	5	Salaries and wages	5
		Other costs	

**SCHEDULE B CAPITAL GAINS AND LOSSES** (See instruction 10)[illegible]

**SUBJECTS**

[illegible]

001 689 077 10 0 1 4 9 1 0 9 9 1

Source: U.S. Census Bureau, *Current Population Reports*, 1990, 1995, 2000, 2005, 2010, 2015, 2020, 2025, 2030, 2035, 2040, 2045, 2050, 2055, 2060, 2065, 2070, 2075, 2080, 2085, 2090, 2095, 2100, 2105, 2110, 2115, 2120, 2125, 2130, 2135, 2140, 2145, 2150, 2155, 2160, 2165, 2170, 2175, 2180, 2185, 2190, 2195, 2200, 2205, 2210, 2215, 2220, 2225, 2230, 2235, 2240, 2245, 2250, 2255, 2260, 2265, 2270, 2275, 2280, 2285, 2290, 2295, 2300, 2305, 2310, 2315, 2320, 2325, 2330, 2335, 2340, 2345, 2350, 2355, 2360, 2365, 2370, 2375, 2380, 2385, 2390, 2395, 2400, 2405, 2410, 2415, 2420, 2425, 2430, 2435, 2440, 2445, 2450, 2455, 2460, 2465, 2470, 2475, 2480, 2485, 2490, 2495, 2500, 2505, 2510, 2515, 2520, 2525, 2530, 2535, 2540, 2545, 2550, 2555, 2560, 2565, 2570, 2575, 2580, 2585, 2590, 2595, 2600, 2605, 2610, 2615, 2620, 2625, 2630, 2635, 2640, 2645, 2650, 2655, 2660, 2665, 2670, 2675, 2680, 2685, 2690, 2695, 2700, 2705, 2710, 2715, 2720, 2725, 2730, 2735, 2740, 2745, 2750, 2755, 2760, 2765, 2770, 2775, 2780, 2785, 2790, 2795, 2800, 2805, 2810, 2815, 2820, 2825, 2830, 2835, 2840, 2845, 2850, 2855, 2860, 2865, 2870, 2875, 2880, 2885, 2890, 2895, 2900, 2905, 2910, 2915, 2920, 2925, 2930, 2935, 2940, 2945, 2950, 2955, 2960, 2965, 2970, 2975, 2980, 2985, 2990, 2995, 3000, 3005, 3010, 3015, 3020, 3025, 3030, 3035, 3040, 3045, 3050, 3055, 3060, 3065, 3070, 3075, 3080, 3085, 3090, 3095, 3100, 3105, 3110, 3115, 3120, 3125, 3130, 3135, 3140, 3145, 3150, 3155, 3160, 3165, 3170, 3175, 3180, 3185, 3190, 3195, 3200, 3205, 3210, 3215, 3220, 3225, 3230, 3235, 3240, 3245, 3250, 3255, 3260, 3265, 3270, 3275, 3280, 3285, 3290, 3295, 3300, 3305, 3310, 3315, 3320, 3325, 3330, 3335, 3340, 3345, 3350, 3355, 3360, 3365, 3370, 3375, 3380, 3385, 3390, 3395, 3400, 3405, 3410, 3415, 3420, 3425, 3430, 3435, 3440, 3445, 3450, 3455, 3460, 3465, 3470, 3475, 3480, 3485, 3490, 3495, 3500, 3505, 3510, 3515, 3520, 3525, 3530, 3535, 3540, 3545, 3550, 3555, 3560, 3565, 3570, 3575, 3580, 3585, 3590, 3595, 3600, 3605, 3610, 3615, 3620, 3625, 3630, 3635, 3640, 3645, 3650, 3655, 3660, 3665, 3670, 3675, 3680, 3685, 3690, 3695, 3700, 3705, 3710, 3715, 3720, 3725, 3730, 3735, 3740, 3745, 3750, 3755, 3760, 3765, 3770, 3775, 3780, 3785, 3790, 3795, 3800, 3805, 3810, 3815, 3820, 3825, 3830, 3835, 3840, 3845, 3850, 3855, 3860, 3865, 3870, 3875, 3880, 3885, 3890, 3895, 3900, 3905, 3910, 3915, 3920, 3925, 3930, 3935, 3940, 3945, 3950, 3955, 3960, 3965, 3970, 3975, 3980, 3985, 3990, 3995, 4000, 4005, 4010, 4015, 4020, 4025, 4030, 4035, 4040, 4045, 4050, 4055, 4060, 4065, 4070, 4075, 4080, 4085, 4090, 4095, 4100, 4105, 4110, 4115, 4120, 4125, 4130, 4135, 4140, 4145, 4150, 4155, 4160, 4165, 4170, 4175, 4180, 4185, 4190, 4195, 4200, 4205, 4210, 4215, 4220, 4225, 4230, 4235, 4240, 4245, 4250, 4255, 4260, 4265, 4270, 4275, 4280, 4285, 4290, 4295, 4300, 4305, 4310, 4315, 4320, 4325, 4330, 4335, 4340, 4345, 4350, 4355, 4360, 4365, 4370, 4375, 4380, 4385, 4390, 4395, 4400, 4405, 4410, 4415, 4420, 4425, 4430, 4435, 4440, 4445, 4450, 4455, 4460, 4465, 4470, 4475, 4480, 4485, 4490, 4495, 4500, 4505, 4510, 4515, 4520, 4525, 4530, 4535, 4540, 4545, 4550, 4555, 4560, 4565, 4570, 4575, 4580, 4585, 4590, 4595, 4600, 4605, 4610, 4615, 4620, 4625, 4630, 4635, 4640, 4645, 4650, 4655, 4660, 4665, 4670, 4675, 4680, 4685, 4690, 4695, 4700, 4705, 4710, 4715, 4720, 4725, 4730, 4735, 4740, 4745, 4750, 4755, 4760, 4765, 4770, 4775, 4780, 4785, 4790, 4795, 4800, 4805, 4810, 4815, 4820, 4825, 4830, 4835, 4840, 4845, 4850, 4855, 4860, 4865, 4870, 4875, 4880, 4885, 4890, 4895, 4900, 4905, 4910, 4915, 4920, 4925, 4930, 4935, 4940, 4945, 4950, 4955, 4960, 4965, 4970, 4975, 4980, 4985, 4990, 4995, 5000, 5005, 5010, 5015, 5020, 5025, 5030, 5035, 5040, 5045, 5050, 5055, 5060, 5065, 5070, 5075, 5080, 5085, 5090, 5095, 5100, 5105, 5110, 5115, 5120, 5125, 5130, 5135, 5140, 5145, 5150, 5155, 5160, 5165, 5170, 5175, 5180, 5185, 5190, 5195, 5200, 5205, 5210, 5215, 5220, 5225, 5230, 5235, 5240, 5245, 5250, 5255, 5260, 5265, 5270, 5275, 5280, 5285, 5290, 5295, 5300, 5305, 5310, 5315, 5320, 5325, 5330, 5335, 5340, 5345, 5350, 5355, 5360, 5365, 5370, 5375, 5380, 53

TREASURY DEPARTMENT  
 INTERNAL REVENUE SERVICE  
 Jacksonville, Fla.

File No. #5361-A

March 16, 1935.

Judge W. O. Thompson  
 Sothe Properties, Inc.  
 Miami, Fla.

Receipt is acknowledged of your letter of recent date requesting for the reasons therein given an extension of time within which to file your return of income tax for the year 1934.

You are hereby granted an extension of time to April 15, 1935, since you must to complete your return for the taxable year above mentioned provided a tentative return is filed with the collector of Internal Revenue Jacksonville, Florida, on or before March 15, 1935, and payment made at that time for at least one-half of the total estimated tax shown to be due.

Your "Tentative Return" is meant to state in the appropriate income tax form showing the name and address of the taxpayer and the estimated amount, if any, of the tax due. THE FILING OF A TENTATIVE RETURN IS A CONDITION PRECEDENT AND UNLESS COMPLIED WITH THIS EXTENSION IS NO EFFECT.

This extension of time for filing your return does not extend the time for the payment of the tax. Payment of the tax must be made on the regular prescribed dates.

Any deficiency in the first installment of the tax will bear interest at the rate of one-half of one per cent per month from the regular due date up to the date of payment.

COPY OF THIS LETTER MUST BE ATTACHED TO BOTH THE TENTATIVE AND COMPLETED RETURNS AS AUTHORITY FOR THE EXTENSION OF TIME HEREBY GRANTED. FAILURE TO DO SO WILL RENDER THE RETURN SUBJECT TO PENALTY FOR DELINQUENCY.

Respectfully,

RAY T. HARRISING,  
 Commissioner.

J. EDWIN JOHNSON



# 1934 RETURN

## CAPITAL-STOCK TAX For year ending June 30, 1934

### DOMESTIC CORPORATIONS

(See 7th, Revenue Act of 1926, 7th Congress, Public, No. 269)  
This return must be filed with the Collector of Internal Revenue for your district on or before July 31, 1934, and the tax must be paid at the same time.

513  
DUPLICATE 516

Collector's Office  
Assessment List, Form 204  
Amount \$550.35  
Examiner's Signature: [Signature]  
Date: [Date]

To be stamped by collector, showing district and date received

- Name Moline Properties, Inc.  
(Give name of corporation, joint-stock company, or association)
- Address 1512 Collins Avenue, Miami Beach, Florida  
(Give address and state number of street, town, county and district, "City or town", and "State")
- Name of parent company, if any \_\_\_\_\_ (Indicate first)
- Name of subsidiary, if any \_\_\_\_\_ No. shares held \_\_\_\_\_ (Indicate first)
- Nature of business in detail Rental Apartments
- Incorporated or organized in State of Florida Month \_\_\_\_\_ Year 1933

#### DECLARATION OF THE VALUE OF THE CAPITAL STOCK

**IMPORTANT.**—Before declaring a value for the capital stock, carefully read the instructions below, as a value once declared cannot later be amended.

If you file your income tax return on a calendar year basis, or would do so if subject to income tax, declare the value of the capital stock of your corporation as of December 31, 1933, which year you will be liable to pay income tax on a basis, subject to statutory adjustments, on which to pay capital-stock tax and interest thereon.

If you file your income-tax return on a fiscal year basis, or would do so if subject to income tax, declare the value of the capital stock of your corporation as of the first day of the fiscal year.

If your corporation was organized during the year July 1, 1933, to June 30, 1934, both dates inclusive, and if you are liable to pay income tax on a basis, subject to statutory adjustments, on which to pay capital-stock tax and interest thereon, declare the value as of the date of organization.

If your corporation is without a capital stock represented by shares, declare a value for the net worth of the corporation.

(See INSTRUCTIONS No. 9 for additional instructions)

7. VALUE OF ENTIRE CAPITAL STOCK \$ 550.35

\* A specific and unqualified value must be shown in this space. If the capital stock is of an value less than "None".

#### EXEMPTIONS (See INSTRUCTIONS No. 6)

- Is exemption from the tax claimed? Answer Yes or No (\_\_\_\_\_).
- If exemption is claimed, check the block which shows basis of claim and furnish the information required on page 2.

#### COMPUTATION OF TAX

	By the Use of Tables	By the Use of Tables
10. Amount shown in item 7	10.000.00	
11. Tax at rate of 1% for each full \$1,000 in item 10 (omit cents)	10.00	
12. Penalty of 25 percent for delinquency in filing return	2.50	
13. Interest	1.00	
14. Total tax, penalty, and interest	13.50	

#### AFFIDAVIT

We, the undersigned, president (or vice president, or other principal officer) and treasurer (assistant treasurer or chief accounting officer) of the corporation for which this return is made, being severally duly sworn, each for himself depose and say that the return, together with the accompanying schedules and statements, has been examined by him and is, to the best of his knowledge and belief, a true and correct return, made in good faith, for the taxable year stated, pursuant to the Revenue Act of 1934 and the Regulations thereunder.

Sworn to and subscribed before me this 15th day of April, 1934

NOTARIAL SEAL

[Signature]  
Signature of officer administering oath

CORPORATE SEAL

(True)  
(See INSTRUCTIONS No. 7)

July 8-6

# REVENUE ACT OF 1934

## TITLE V—CAPITAL-STOCK AND EXCESS-PROFITS TAXES

### SECTION 701. CAPITAL-STOCK TAX

(a) For each year ending June 30, beginning with the year ending June 30, 1934, there is hereby imposed upon every domestic corporation with respect to carrying on or doing business for any part of such year an excise tax of \$1 for each \$1,000 of the adjusted declared value of its capital stock.

(b) For each year ending June 30, beginning with the year ending June 30, 1934, there is hereby imposed upon every foreign corporation with respect to carrying on or doing business in the United States for any part of such year an excise tax equivalent of \$1 for each \$1,000 of the adjusted declared value of capital employed in the transaction of its business in the United States.

(c) The taxes imposed by this section shall not apply:

- (1) to any corporation enumerated in section 191;
- (2) to any insurance company subject to the tax imposed by section 201, 204, or 207;
- (3) to any domestic corporation in respect of the year ending June 30, 1934, if it did not carry on or do business during a part of the period from the date of the enactment of this act to June 30, 1934, both dates inclusive; or
- (4) to any foreign corporation in respect of the year ending June 30, 1934, if it did not carry on or do business in the United States during a part of the period from the date of the enactment of this act to June 30, 1934, both dates inclusive.

(d) Every corporation liable for tax under this section shall make a return under oath within one month after the close of the year with respect to which such tax is imposed to the collector for the district in which is located its principal place of business or, if its principal place of business is in the United States, then to the collector at Baltimore, Md. Such return shall contain such information as shall be made in such manner as the Commissioner, with the approval of the Secretary, may by regulations prescribe. The tax shall be paid in such manner as the Commissioner, with the approval of the Secretary, may by regulations prescribe. The tax shall be paid at the time when the tax becomes due, until paid. All provisions of law (including penalties) applicable in respect of the taxes imposed by section 200 of the Revenue Act of 1926 shall, insofar as not inconsistent with this section, be applicable in respect of the taxes imposed by this section. The Commissioner may extend the time for making the return and paying the taxes imposed by this section, under such regulations as he may prescribe, with the approval of the Secretary, but no such extension shall be for more than 90 days.

(e) Returns required to be filed for the purpose of the tax imposed by this section shall be open to inspection in the same manner as the same returns, and subject to the same provisions of law, including penalties, as returns made under title 11 of the Revenue Act of 1926.

(f) For the first year ending June 30 in respect of which a tax is imposed by this section upon any corporation, the adjusted declared value shall be the value as declared by the corporation in its first return under this section (which declaration of value cannot be amended), or, in the case of the first income-tax taxable year ending at or prior to the close of the year for which the tax is imposed by this section (or as of the date of organization in the case of a corporation having no income-tax taxable year ending at or prior to the close of the year for which the tax is imposed by this section). For any subsequent year ending June 30, the adjusted declared value in the case of a domestic corporation shall be the original declared value plus (1) the cash and fair market value of property paid in for stock or shares, (2) paid in surplus and contributions to capital, (3) its net income, (4) the excess of its income wholly exempt from the taxes imposed by title I over the amount deducted as a deduction by section 24(d) (2) of such title, and (5) the amount of the dividend deduction allowable for income-tax purposes, and minus (A) the value of property distributed in liquidation to shareholders, (B) distribution of earnings or profits, and (C) the amount of the deductions allowable for income-tax purposes over its gross income; adjustment being made for each income-tax taxable year included in the period from the date as of which the original declared value was declared to the close of its last income-tax taxable year ending at or prior to the close of the year for which the tax is imposed by this section. The amount of such adjustment for each such year shall be computed (on the basis of a separate return) according to the income-tax law applicable to such year. For any subsequent year ending June 30, the adjusted declared value in the case of a foreign corporation shall be the original declared value adjusted (for the same income-tax taxable year as in the case of a domestic corporation), in accordance with regulations prescribed by the Commissioner, with the approval of the Secretary, to reflect increases or decreases in the capital employed in the transaction of its business in the United States.

### SECTION 702. EXCESS-PROFITS TAX

(a) There is hereby imposed upon the net income of every corporation, for each income-tax taxable year ending after the close of the first year in respect of which it is taxable under section 701, an excess-profits tax equivalent to 5 per centum of such portion of its net income for such income-tax taxable year as is in excess of 12½ per centum of the adjusted declared value of its capital stock (or in the case of a foreign corporation the adjusted declared value of capital employed in the transaction of its business in the United States) at the close of the preceding income-tax taxable year (or as of the date of organization if it had no preceding income-tax taxable year) determined as provided in section 701. If the income-tax taxable year in respect of which the tax under this section is imposed is a period of less than 12 months, such adjusted declared value shall be reduced to an amount which bears the same ratio thereto as the number of months in the period bears to 12 months. For the purpose of this section the net income shall be the same as the net income for income-tax purposes for the year in respect of which the tax under this section is imposed.

(b) All provisions of law (including penalties) applicable in respect of the taxes imposed by title I of this act, shall, insofar as not inconsistent with this section, be applicable in respect of the tax imposed by this section, except that the provisions of section 131 of that title shall not be applicable.

### SECTION 703. CAPITAL-STOCK TAX AND EXCESS-PROFITS TAX IMPOSED BY NATIONAL INDUSTRIAL RECOVERY ACT

Sections 217(d) and (e) of the National Industrial Recovery Act are amended to read as follows:

"(d) The capital-stock tax imposed by section 215 shall not apply to any taxpayer in respect of any year except the year ending June 30, 1933.

"(e) The excess-profits tax imposed by section 216 shall not apply to any taxpayer in respect of any taxable year ending after June 30, 1934."

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RETURN FORM MARKED "DUPLICATE" MUST BE FILED WITH THIS ORIGINAL RETURN

Form 1120

**CORPORATION INCOME AND EXCESS-PROFITS TAX RETURN**  
**For Calendar Year 1936**

Page 1 of Return

Fiscal Year begun , 1936, and ended , 1937

PRINT PLAINLY CORPORATION'S NAME AND BUSINESS ADDRESS

**MOBILE PROPERTIES INC.**

**1510 BILLINE AVENUE**

**MOBILE, ALA.**

**STATE**

**FLORIDA**

See Instructions. Except Where Otherwise Provided in the Instructions, This Tax Form is Completely Filled In Respect to the Assets, Liabilities, Income, Deductions, or Reports Submitted Hereunder

**EXCESS PROFITS TAX COMPUTATION**

**NET TAX COMPUTATION**

AND RELATED

of lesser needs.





1. This return is to be filed by the taxpayer or by a person authorized to sign the return on behalf of the taxpayer.

2. The return is to be filed by the taxpayer or by a person authorized to sign the return on behalf of the taxpayer.

3. The return is to be filed by the taxpayer or by a person authorized to sign the return on behalf of the taxpayer.

4. The return is to be filed by the taxpayer or by a person authorized to sign the return on behalf of the taxpayer.

5. The return is to be filed by the taxpayer or by a person authorized to sign the return on behalf of the taxpayer.

### LIABILITY FOR FILING RETURNS

Questions generally: The taxpayer is liable for the filing of the return. The taxpayer is liable for the filing of the return.

Partnerships: The partners are jointly and severally liable for the filing of the return. The partners are jointly and severally liable for the filing of the return.

Insurance companies: The insurance companies are liable for the filing of the return. The insurance companies are liable for the filing of the return.

### TIME AND PLACE FOR FILING

The return must be filed on or before the fifteenth day of the third month following the close of the taxable year with the collector for the district in which the taxpayer has his principal place of business or personal office or agency.

### AFFIDAVIT (See "Signature and Verification", above)

I, the undersigned, president or vice president, or other principal officer, and treasurer or assistant treasurer, or chief accounting officer, of the corporation, hereby declare under oath, severally and jointly, that the return, including any accompanying schedules and statements, is a true, correct, and complete statement of all the information required by the law, and that the same was prepared by me or under my direction and control.

INITIALS

Signature of officer or agent

Title

### AFFIDAVIT (See "Signature and Verification", above)

I swear (or affirm) that I prepared this return for the person named herein and that the same is a true, correct, and complete statement of all the information required by the law, and that the same was prepared by me or under my direction and control.

Subscribed and sworn to before me this 30 day of June 1938.

Signature of person preparing the return

United States Board of Tax Appeals

Received

Mar 21 1942

Filed

Mar 21 1942

IN THE UNITED STATES CIRCUIT COURT OF  
APPEALS FOR THE FIFTH CIRCUIT

GUY T. HELVERING,	} B. T. A. Docket No. 103862
Commissioner of Internal Revenue,	
Petitioner on Review,	
v.	
MOLINE PROPERTIES, INC.,	
Respondent on Review.	

PRAECIPE FOR RECORD

To the Clerk of the United States Board of Tax Appeals:

You will please prepare, transmit and deliver to the Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, copies duly certified as correct of the following documents and records in the above-entitled cause, in connection with the petition for review by the said Circuit Court of Appeals for the Fifth Circuit, heretofore filed by the Commissioner of Internal Revenue:

1. Docket entries of the proceedings before the Board.

2. Pleadings before the Board:

(a) Petition, including annexed copy of deficiency notice.

(b) Answer.



3. Findings of fact and opinion promulgated November 7, 1941.

4. Decision entered November 7, 1941.

5. Petition for review and assignments of error.

6. Notices of filing petition for review.

7. Statement of Evidence.

8. Petitioner's Exhibit 1 (Charter consisting of 8 sheets, and minutes of Directors' meeting of October 1, 1929, only); Respondent's Exhibit A, 1934 Federal income tax return of Moline Properties, Inc.; Respondent's Exhibit D—1936 Federal income tax return of Moline Properties, Inc. (sheets 1 and 6 only); Respondent's Exhibit E—1936 Federal income tax return of Uly O. Thompson.

9. This Praeceptum.

J. P. WENCHEL,

Chief Counsel,

Bureau of Internal Revenue.

Statement of Service:

A copy of this praecipe for record was mailed to Douglas D. Felix, Esq., Congress Building, Miami, Florida, attorney for respondent on review, this date, March 20, 1942.

CHAS. E. LOWERY,

Special Attorney,

Bureau of Internal Revenue.

UNITED STATES BOARD OF TAX APPEALS  
WASHINGTON

COMMISSIONER OF INTERNAL  
REVENUE,

Petitioner,

v.

MOLINE PROPERTIES, INC.,

Respondent.

} Docket No. 103862

CERTIFICATE

I, B. D. Gamble, clerk of the U. S. Board of Tax Appeals, do hereby certify that the foregoing pages, 1 to 79, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Praeceptum in the appeal (or appeals) as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of the United States Board of Tax Appeals, at Washington, in the District of Columbia, this 1st day of April, 1942.

B. D. GAMBLE,

Clerk,

(Seal)

United States Board of Tax Appeals.

[fol. 89] That thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

ARGUMENT AND SUBMISSION

Extract from the Minutes of October 13th, 1942

No. 10279

COMMISSIONER OF INTERNAL REVENUE

versus

MOLINE PROPERTIES, INC.

On this day this cause was called, and, after argument by Benjamin M. Brodsky, Esq., Special Assistant to the Attorney General, for petitioner, and Douglas D. Felix, Esq., for respondent, was submitted to the Court.

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[fol. 90] OPINION OF THE COURT—Filed November 7, 1942

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE  
FIFTH CIRCUIT

No. 10279

COMMISSIONER OF INTERNAL REVENUE, Petitioner,

versus

MOLINE PROPERTIES, INC., Respondent

Petition for Review of Decision of the United States Board  
of Tax Appeals (District of Florida)

(November 7, 1942)

Before Sibley, Holmes, and McCord, Circuit Judges

McCord, Circuit Judge:

The petition involves income and excess-profits taxes for the years 1935 and 1936, and a delinquency penalty for the year 1936. The facts are stated in detail by the Board

of Tax Appeals in its reported opinion, *Moline Properties, Inc.*, 45 B. T. A. 647.

The respondent, Moline Properties, Inc., was organized in 1928, and at all times Uly O. Thompson has been its president and sole stockholder, with the exception of holders [fol. 91] of qualifying shares. The corporation was organized at the suggestion of Thompson's creditors as a means of protecting investments and saving his equity in certain parcels of real estate located in Florida; the mortgagee having agreed to advance further funds on condition that the corporation should be organized. The property was conveyed by Thompson to the corporation, and the stock issued to him was pledged with the mortgagee and placed in a voting trust. On July 29, 1933, the corporation satisfied the two outstanding mortgages with funds secured from a new mortgage loan. Control of the corporation was returned to Thompson in 1933.

Moline Properties, Inc., did not keep books of account or maintain a bank account. It owned no assets other than the real estate. In 1934 it leased a portion of its properties for use as a parking lot and received \$1,000.00 as rental. Thompson owned other extensive real property holdings in Miami, Florida, title to all of which was in his name individually.

The real property held by Moline Properties, Inc., was sold in three separate parcels, one each in the years 1934, 1935, and 1936. The corporation transacted no further business after sale of the last parcel of property in 1936. The Board of Tax Appeals sustained the taxpayer's contentions and held that the corporation functioned merely as an agent for Thompson; that the corporate existence must be disregarded in taxing the gains from the sales of the property of the corporation; and that, treating Moline Properties, Inc., as a corporation without substance, Thompson was entitled to report the proceeds from the sales as his individual income. By timely petition for review the Commissioner of Internal Revenue questions the correctness of the Board's decision.

[fol. 92] The Board of Tax Appeals erred in its decision. Ordinarily a corporation and its stockholders are for purposes of taxation held to be separate entities, and the rule is not changed by the mere fact that one person owns all or substantially all of the stock of the corporation. *Planter's Cotton Oil Co. v. Hopkins*, 53 F. 2d 825; *Watson v. Com-*

*missioner*, 124 F. 2d 437. In tax matters "the tendency is not to ignore the corporate entity unless it be used to defraud the law, but rather, when natural persons are using corporate forms to do their business, they and their corporations are held to the literal consequences." *Banckner v. Commissioner*, 76 F. 2d 1. In the case at bar Thompson, for reasons satisfactory to himself and to his creditors, elected to employ a corporation in the handling of certain parcels of his real estate. Having chosen the corporate form to conduct these affairs, both Thompson and his corporation must accept the tax disadvantages of the plan; and they may not now, in order to escape corporate taxes, be heard to disavow the corporate existence and allege that the respondent was merely a "dummy" corporation. *Higgins v. Smith*, 308 U. S. 473, 477; *Interstate Transit Lines v. Commissioner*, 130 F. 2d 136.

The gains from the sales of the properties of the corporation were taxable to the respondent. Accordingly, the petition is granted, and the decision of the Board of Tax Appeals is reversed with directions to enter decision for the Commissioner.

[fol. 93]

# JUDGMENT

Extract from the Minutes of November 7th, 1942

No. 10279

COMMISSIONER OF INTERNAL REVENUE

versus

MOLINE PROPERTIES, INC.

This cause came on to be heard on the petition of Commissioner of Internal Revenue for a review of a decision of the United States Board of Tax Appeals, and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged and decreed by this Court, that said petition be, and the same is hereby, granted; and that the decision of the said United States Board of Tax Appeals in this cause be, and the same is hereby, reversed with directions to enter decision for the Commissioner.

[fol. 94] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

PETITION FOR REHEARING

[fol. 95] To The Honorable United States Circuit Court of Appeals for the Fifth Circuit:

Comes Now Moline Properties, Inc., by its unsigned attorney, and presents this, its petition for a rehearing of said cause, in which final judgment was rendered by this court on November 7th, 1942, reversing the opinion and judgment of Board of Tax Appeals; and in support of this petition, it respectfully shows:

1

That this Honorable court overlooked and failed properly to consider that the Board of Tax Appeals found *as matters of fact*, either under its caption, "Findings of Fact", or under its caption, "Opinion", from the testimony and documentary proof, the following:

(a) That the loan of \$6750.00 was made to *Thompson*, although the note, of necessity, was executed by the corporation, but the Bank required Thompson to endorse it.

(b) That the corporation was organized by and upon the suggestion or demand of the bank to hold title to the real estate involved. "That the primary purpose" in forming the corporation was, the "protection of the stockholders' creditors", which places it in the category of a dummy corporation. (40 B.T.A. 653).

(c) The record of testimony and findings of the Board of Tax Appeals clearly indicate the corporation engaged in no business, had no bank account, paid its officers no salary, received no income from any source, whatsoever, (Thompson was paid the \$1000.00 lease money), paid no subsequent [fol. 96] taxes, state, county, or city; and that the only loan negotiated after the corporation was formed, from National Investment Holdings, was made direct to Judge Uly O. Thompson. The checks from National Holdings were

made payable to Thompson, as well as the payment of \$1000.00 covering the parking lot lease.

(d) The record of testimony further discloses that the expenses of the restriction suit,—attorney's fees, court costs, etc., while brought nominally in the name of Moline Properties, were paid by Thompson, aggregating an amount in excess of \$4000.00.

(e) The record of testimony and findings and opinion of the Board of Tax Appeals clearly established that the *primary* purpose for forming the corporation, as is borne out by the trust agreement, was to enable the bank to bolster up its financial status and to enable it to make quick sale and delivery of the property involved under the powers of said voting trust, regardless of whether the corporation, Moline Properties, or Thompson, wished, or did not wish, to sell the real estate.

(f) The record of testimony and findings of fact by the Board of Tax Appeals and its opinion fairly established that the beneficial interest of Thompson in said property was not altered or changed; that he received all income from the property and paid all expenses in relation thereto; that he was relieved of no personal liability because of its formation, but personally endorsed the \$6750.00 note which he afterward paid with money actually advanced to him, by National Investment Holdings, Inc., and that he afterwards [fol. 97] assumed and paid the expenses of the restriction suit, though brought in the name, nominally, of Moline Properties, Inc.

(g) That from its very inception, the corporation, as such, had no apparent assets, and no way of coming into possession of any, with the exception of the real estate involved herein, for the simple reason that *all* of the corporate stock was issued to, or controlled by, Thompson, directly or indirectly, as under the trust agreement, from the very day the corporation came into existence.

(h) The undisputed testimony and findings by the Board of Tax Appeals clearly established that the corporation was formed, *primarily* as a receptacle to hold legal title to this particular piece of real estate, only, and that its limited activities did not constitute engaging in business as a separate entity.



(i) That Thompson was the real and beneficial owner of all,—not 98%,—of the stock of Moline Properties, Inc.

## 2

The court overlooked that there is no testimony in the entire record, nor finding by the Board of Tax Appeals, that the form employed for doing business or carrying out the challenged tax event was unreal or a sham; but, on the contrary, the Board of Tax Appeals found that Thompson owned *all* the stock, that the corporation existed, only, for the limited purpose of holding title to the described real estate, primarily to secure its creditors; and that since Thompson commanded at all times, the entire income and benefits of the property involved,—as well as being person-[fol. 98] ally responsible for all its debts,—he is entitled to be determined as the real owner of the property, and was entitled to make the return and take the exemptions, here in dispute. (*Higgins v. Smith* 308 U. S. 473 text 478).

## 3

Since this honorable court did not question the findings of fact made by the Board of Tax Appeals, it is respectfully suggested that the court overlooked and failed to apply the applicable principle of law, that where "There is no challenge to the findings of fact made by the Board of Tax Appeals as being unsupported by evidence, they must be treated as conclusive". *Burnett*, commissioner of Internal Revenue, v. *Leininger*. 52 Su. Ct. R. 345; 285 U. S. 136. *Phillips v. Commissioner* 283 U. S. 589, 599, 600.

## 4

This honorable court overlooked and failed to apply the applicable principles of law that it will not review findings of fact made by the Board of Tax Appeals, unless it appears that such findings are not supported by *any* substantial evidence. *Helving v. Rankin*, 55 S. Ct. 732; *Phillips v. Commissioner of Internal Revenue*, 283 U. S. 589; *Burnet v. Leininger*, 285 U. S. 136; *Old Mission Portland Cement Company v. Helvering*, 293 U. S. 289; *General Utilities & Operating Company v. Helvering*, 56 S. Ct. 185; *Avery v. Commissioner*, 22 Fed. (2d) 6 (CCA 5); *Hamilton Carhartt Cotton Mills v. Commissioner of Internal Revenue*, 56 Fed. (2d) 145 (CCA 5).

Based upon the findings of fact and opinion of the Board of Tax Appeals, and upon the entire record of testimony [fol. 99] in said cause, it is respectfully submitted that the opinion of this court is in error since "It is command of income and its benefits which marks the real owner of property". (Higgins v. Smith. 84 Law Ed. 411; 308 U. S. 478).

Respectfully submitted, H. H. Eyles, Thomas H. Anderson, Attorneys for Petitioner.

#### Certificate Of Counsel

I hereby certify that I have read the Petitioner's Petition for Re-Hearing and in my judgment it is well founded and is not interposed for the purpose of delay.

H. H. Eyles, Attorney for Petitioner.

[fol. 100] ORDER DENYING REHEARING

Extract from the Minutes of December 11, 1942

No. 10279

COMMISSIONER OF INTERNAL REVENUE

versus

MOLINE PROPERTIES, INC.

It is ordered by the Court that the petition for rehearing filed in this cause be, and the same is hereby, denied.

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[fol. 101] MOTION AND ORDER STAYING MANDATE—Filed  
December 28, 1942

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE  
FIFTH CIRCUIT

No. 10279

COMMISSIONER OF INTERNAL REVENUE, Petitioner,

versus

MOLINE PROPERTIES, INC., Respondent

Now comes the respondent and petitions the court to enter an order staying the mandate herein, and for grounds thereof, says:

1. That the respondent is preparing and intends to file in the United States Supreme Court, a petition for Writ of Certiorari, and that the respondent requires at least twenty days for the completion and filing of said petition.

Dated at Miami, Florida, December 21st, A. D. 1942.

(Signed) H. H. Eyles, Thos. H. Anderson, Attorneys for Respondent.

[fol. 102] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE  
FIFTH DISTRICT

No. 10279

COMMISSIONER OF INTERNAL REVENUE, Petitioner,

versus

MOLINE PROPERTIES, INC., Respondent

On Consideration of the Application of the Respondent in the above numbered and entitled cause for a stay of the mandate of this court therein, to enable Respondent to apply for and to obtain a writ of certiorari from the Supreme Court of the United States, It Is Ordered that the issue of the mandate of this court in said cause be and the same is stayed for a period of thirty days; the stay to continue in force until the final disposition of the case by the Supreme Court, provided that within thirty days from the date of this order there shall be filed with the clerk of this court the certificate of the clerk of the Supreme Court that the certiorari petition, record and brief have been filed, and that due proof of service of notice thereof under Paragraph 3 of Rule 38 of the Supreme Court has been given. It is further ordered that the clerk shall issue the mandate upon the filing of a copy of an order of the Supreme Court denying the writ, or upon the expiration of thirty days from the date of this order, unless the above-mentioned certificate shall be filed with the clerk of this court within that time.

Done at Montgomery, Ala., this 26th day of December, 1942.

(Signed) Leon McCord, United States Circuit Judge.

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[fol. 103] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 104] SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 660

[Title omitted]

ORDER ALLOWING CERTIORARI—Filed March 8, 1943

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted. The case is transferred to the summary docket and assigned for argument immediately following No. 552.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on Cover: Enter Bart A. Riley. File No. 47, 161. U. S. Circuit Court of Appeals, Fifth Circuit. Term No. 660. Moline Properties, Inc., Petitioner, vs. Commissioner of Internal Revenue. Petition for a writ of certiorari and exhibit thereto. Filed January 18, 1943. Term No. 660 O. T. 1942.

(5505)